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PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

No. 1871, dated the 21st July, 1908.

The following further Report of the Select Committee on the Bengal Local Self-Government (Amendment) Bill, together with the Bill as amended by the Committee, is, by order of the President, published for general information:—

THE BENGAL LOCAL SELF-GOVERNMENT (AMENDMENT) BILL, 1908.

FURTHER REPORT OF THE SELECT COMMITTEE.

We, the undersigned, Members of the Select Committee to whom the Bengal Local Self-Government (Amendment) Bill, 1907, was re-committed, have incorporated in the Bill the provisions framed by the Government relating to (1) the prevention of the diversion of the road-cess and (2) sanitation, and have the honour to submit this, our Report, with the Bill as amended by us annexed hereto.

2. The provisions for preventing the diversion of the road-cess are contained in clauses 25(3), 26(1), (5), 26A, 59(4) [sub-clause (h2)] and 64 of the annexed Bill, and those relating to sanitation are contained in clauses 42A, 53 (sections 115 to 118C) and 59 (8a) and (11). For ready reference, these clauses are marked, in the Bill, with lines.

3. In the first group of provisions we have made slight alterations in the Government draft of clause 26 (5), 59(4) [sub-clause (h2)] and 64 [sub-clause (c)].

4. In the second group of provisions, relating to sanitation, we have made the following alterations on points of substance:—

(1) In sub-section (1) of the new section 116, we have given power to Union Committees to cause privies to be removed, and to cause private drains to be constructed, altered or removed. Privies are often erected by the side of tanks, and their retention in such a position necessarily leads to the fouling of the water.

(2) We have restricted sub-sections (2), (3) and (4) of the same section (which empower Union Committees to require work to be done by owners or occupiers) to the removal of huts or privies and the construction, alteration and removal of private drains. We consider that the other improvements authorised by sub-section (1) should be carried out by the Committees themselves, since they are of a public character, without calling upon owners or occupiers in the first instance to undertake the work.

(3) We have inserted a section (118AA) giving powers of entry for the purpose of making inspections or executing work under the new provisions.

(4) We have altered section 118B so as to declare that an assessment for the purpose of providing extra funds for meeting the cost of executing work under the new provisions shall not be imposed unless it is authorised by a resolution passed at a special meeting by the votes of not less than two-thirds of the members of the Union Committee.

(5) We have also revised the same section so as to declare in more precise terms what portions of the Village-chaukidari Act, 1870, or the Chota Nagpur Rural Police Act, 1887, as the case may be, are to apply to this assessment.

(6) We have also altered sub-section (4) of the same section so as to declare that the amount to be assessed on any one person shall not exceed seven rupees *per nensem*, and that the assessment may be made payable either in a lump sum or in periodical instalments.

(7) In section 118C we have reduced from six to three months the time allowed for an appeal from an order of the Union Committee under the new provisions, and have substituted a sub-committee of the District Board for the Magistrate, as the appellate authority.

5. We recommend that the Bill, as now amended, be circulated for opinion, and that an early date should be appointed for the submission of opinions, to admit of the Bill being passed during the present session.

C. A. OLDHAM.

R. T. GREER.

W. A. INGLIS.

JOGENDRA CHANDRA GHOSE.

The 20th July 1908.

I SIGN this Report subject to the following note of dissent :—

NOTE OF DISSENT.

For the purpose of promoting rural sanitation, the imposition of a special tax has been provided in section 11B under clause 53 of the Bill. The tax is to be levied from "owners and occupiers of the property" within the Union, and in this respect the method of assessment is essentially at variance with that provided in the Village-Chaukidari Act, 1870, and the Chota Nagpore Police Act, 1887, though the Bill as regards the levy of the tax professes to follow those enactments. Those Acts render the owners or occupiers of houses and persons having *kutcheries* for collecting rents liable to assessment—*see* section 14 of the Village-Chaukidari Act, and section 7 of the Chota Nagpore Police Act. The use of the word "property" in the Bill (section 118B) instead of "houses" and "kutcheries" as in the aforesaid Acts materially enlarges the scope of the special tax so far as the assessees are concerned, making it co-extensive with the road cess. Reading the portion of the Bill dealing with Unions, as a whole, I venture to think that this is not intended.

In the case of a tax on persons according to their circumstances and property for the sanitary welfare of limited areas I would prefer to follow the Bengal Municipal Act, 1884, which makes such a tax leviable from occupier only—*see* section 98 of that Act.

KISI ORI LAL GOSWAMI.

THE BENGAL LOCAL SELF-GOVERNMENT.
(AMENDMENT) BILL, 1908.

AS FURTHER AMENDED BY THE SELECT COMMITTEE.

[Notes—1. The amendments made by the Select Committee are, as far as possible shown in antique type.

2. The new provisions for preventing the diversion of the road-cess and for sanitation are marked with lines.]

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THE BENGAL LOCAL SELF-GOVERNMENT
(AMENDMENT) BILL, 1908.

AS FURTHER AMENDED BY THE SELECT COMMITTEE.

[Notes.—1. The amendments made by the Select Committee are, as far as possible, shown in antique type.
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A
BILL

to amend the Bengal Local Self-Government Act of 1885.

WHEREAS it is expedient to amend the Bengal Local Self-Government Act of 1885 in manner hereinafter appearing;

Ben. Act III
of 1885.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Local Self-Government (Amendment) Act, 1908.

Repeal of portions of
Bengal Act III of 1885.

2. The following portions of the Bengal Local Self-Government Act of 1885 are hereby repealed, namely:—

Ben. Act III
of 1885.

in section 1, the words “or of the districts of Singhbhum, the Sonthal Parganas or the Chittagong Hill-tracts”;

in the proviso to section 6, the words “and in any other sub-division to which the provisions of the next succeeding Chapter shall have been extended”;

section 16;

section 24;

the last paragraph of section 25;

section 34;

section 72;

the proviso to section 73, and

in section 103, the words “A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and”.

Addition to section 5.

3. To section 5 of the said Act the following shall be added, namely:—

“and ‘sanitation’ includes water-supply.”

Amendments of
sections 7, 11 and 15.

4. (1) In section 7 of the said Act, after the figures “22” the words, figures and letter “section 23A or section 29” shall be inserted.

(2) For the words “Lieutenant-Governor,” where they occur in the sixth paragraph of section 7, in section 11, and in the first paragraph of section 15 of the said Act, the word “Commissioner” shall be substituted.

New section 10.

5. For section 10 of the said Act, the following shall be substituted, namely:—

“10. If, within the time prescribed by rules made by the Lieutenant-Governor under this Act, the prescribed proportion of elected members of any District Board or Local Board is not duly elected, the Commissioner may appoint members to make up that proportion.”

Amendment of
proviso to section 13.

5A. In clause (2) of the proviso to section 13 of the said Act, for the words “the area under the authority of such Local Board” the words “the sub-division for which such Local Board has been established” shall be substituted.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 6-8.)

Amendment of section 17. 6. In section 17 of the said Act, for the words "Lieutenant-Governor" and for the word "Commissioner," in both places in which they respectively occur, the word "Commissioner" and the words "District Board," respectively, shall be substituted.

Amendment of section 18. 7. (1) Section 18 of the said Act shall be re-numbered section 18, sub-section (1).

(2) In the said sub-section (1)—

- (i) for the words "Lieutenant-Governor", wherever they occur, the word "Commissioner" shall be substituted;
- (ii) for the words "or Local Board" the words "Local Board or Union Committee" shall be substituted;
- (iii) in clause (a), the words from "or is convicted" to the words "unfits him to be a member" are hereby repealed.

(3) To the said section the following shall be added, namely :—

"(2) Any member who is removed under sub-section (1) may appeal to the Lieutenant-Governor, whose decision shall be final."

New section 18A 7A. After section 18 of the said Act the following shall be inserted, namely :—

"18A. The Lieutenant-Governor may remove any member of a District Board, Local Board or Union Committee who is convicted of any such offence, or is subjected by a Criminal Court to any such order, as, in the opinion of the Lieutenant-Governor, formed, after due inquiry, unfits him to be a member."

New sections 19 and 19A. 8. For section 19 of the said Act the following shall be substituted, namely :—

"19. (1) When the place of an elected member of a District Board or Local Board becomes vacant by his resignation, removal or death, a new member shall be elected, in accordance with the rules made by the Lieutenant-Governor under this Act, to fill the place:

Provided that if, within the time prescribed by such rules, no new member is duly elected, the Commissioner may appoint a new member to fill the place.

(2) When the place of an appointed member of a District Board or Local Board becomes vacant as aforesaid, the Commissioner may appoint a new member to fill the place.

(3) No act of any District Board or Local Board, or of its officers, shall be deemed to be invalid by reason only of the fact that the number of members of the Board, at the time of the performance of the act, was less than the prescribed number.

"19A. (1) A member of a District Board or Local Board who has been appointed by official designation shall, subject to sections 17, 18 and 18A of this Act, and unless the Lieutenant-Governor otherwise directs, continue to be a member of the Board while he continues to hold the office to which such designation refers.

(2) A member of a District Board or Local Board who has been elected or appointed under section 19 shall, subject as aforesaid, hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office.

[Cf. Ben. Act III of 1885, s. 16 and s. 18, last para.]

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 9-14.)

(3) In cases not provided for by sub-section (1) or sub-section (2) of this section, the term of office of a member of a District Board or Local Board shall be fixed by the Lieutenant-Governor by rules, which may provide for the retirement of members by rotation.

(4) An outgoing member of a District Board or Local Board may, if otherwise qualified, be re-elected or re-appointed."

Amendment of sec-
tion 22.

9. In section 22 of the said Act, after the word "elected" the words "either by name or by virtue of his office" shall be inserted.

New section 23A.

10. After section 23 of the said Act, the following shall be inserted, namely:—

"23A. If any District Board fails to elect a Chairman or Vice-Chairman within the time prescribed by rules made by the Lieutenant-Governor under this Act, the Lieutenant-Governor may appoint a Chairman or Vice-Chairman, as the case may be."

Amendment of sec-
tion 25.

11. In section 25 of the said Act,—

(a) after the word "elected" the words "either by name or by virtue of his office" shall be inserted; and

(b) for the words "Lieutenant-Governor," in the first, second, fourth and fifth places in which they occur, the word "Commissioner" shall be substituted.

New sections 26 and
26A.

12. For section 26 of the said Act, the following shall be substituted, namely:—

"26. (1) Every Local Board shall, from time to time, within a period prescribed by rules made by the Lieutenant-Governor under this Act, elect one of its members to be Vice-Chairman.

(2) If any Local Board fails to elect a Vice-Chairman within such period, the Commissioner may appoint a Vice-Chairman.

"26A. A District Board or Local Board may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year."

[C. Ben. Act
III of 1884, s.
26B.]Amendment of sec-
tion 27.

13. In section 27 of the said Act, for the words "to the Lieutenant-Governor, and on such resignation being accepted," the following shall be substituted, namely:—

"in the case of a Chairman of a District Board, to the Lieutenant-Governor, and, in the case of a Chairman of a Local Board, to the Commissioner; and, on such resignation being accepted by the Lieutenant-Governor or Commissioner, as the case may be".

New sections 28 and
28A.

14. For section 29 of the said Act, the following shall be substituted, namely:—

"29. (1) If a Chairman of a District Board dies, resigns, is removed, or avails himself of leave granted under section 26A, the Lieutenant-Governor may appoint a new Chairman, or may direct that, within a period prescribed by rules made by the Lieutenant-Governor under this Act, a new Chairman be elected by the members of the Board from among their own number, subject to his approval.

Casual vacancies in office
of Chairman or of Vice-
Chairman of District or
Local Board.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 15, 16.)

(2) If a Chairman of a Local Board or a Vice-Chairman of a District Board or Local Board dies, resigns, is removed, or avails himself of leave granted under section 26A, the Board shall, at a special meeting held for the purpose within a period prescribed by rules made by the Lieutenant-Governor under this Act, elect from among its members a new Chairman or Vice-Chairman, as the case may be.

(3) If any District Board or Local Board fails to elect a new Chairman or Vice-Chairman within the prescribed period, the Lieutenant-Governor (in the case of a District Board) or the Commissioner (in the case of a Local Board) may appoint a new Chairman or Vice-Chairman, as the case may be.

“29A. (1) The term of office of an elected Chairman or Vice-Chairman of a District Board or Local Board, or of an appointed Vice-Chairman of a District Board or Chairman or Vice-Chairman of a Local Board, shall, subject to sections 27 and 28 of this Act, be the residue of his term of office as a member of the Board.

[*Cf. Ben. Act III of 1886, s. 24; s. 25, last para.; s. 26, second para.; and s. 29, third para.*]

(2) The term of office of an appointed Chairman of a District Board shall, subject as aforesaid, be one year from the date of his appointment; but he may be re-appointed on the expiration of that term.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the term of office of a Chairman or Vice-Chairman appointed or elected to fill a casual vacancy consequent upon the grant of leave under section 26A shall expire upon the return from leave of the person whose office he was appointed or elected to fill.

[*Cf. Ben. Act III of 1884, s. 27.*]

(4) Every appointed Chairman of a District Board shall be deemed to be a member of the Board during his term of office.”

Amendment of sec. 15. In section 32 of the said Act,—
tion 32.

(a) for the words “Every District Board, and every Local Board with the sanction of the District Board,” the following shall be substituted, namely:—

“Any District Board, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor, and any Local Board, with the sanction of the District Board and of the Commissioner and subject to the control of the Lieutenant-Governor”;

(b) for the words “leave, suspension and removal,” in clause (g), the words “leave, leave allowance and punishment (including suspension and removal)” shall be substituted;

(c) after the words “and may” the words “with the like sanction and subject to the like control” shall be inserted; and

(d) for the concluding paragraph the following shall be substituted, namely:—

“All rules made under this section, and all orders repealing or altering any such rules, shall be published in such manner as the Lieutenant-Governor may direct; and, so far as they are consistent with this Act and with any rules made by the Lieutenant-Governor hereunder, shall, upon such publication, have the force of law.”

Amendment of sec-
tion 33.

16. In section 33 of the said Act, after the words and figures “under section 30” the following shall be inserted, namely:—

“or by an Education Committee referred to in section 65B.”

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 17-25.)

New section 35.

17. For section 35 of the said Act, the following shall be substituted, namely:—

“35. A District Board may, from time to time, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor, make rules for pensions and gratuities to be granted and paid out of the District Fund to its establishment and for the grant and payment therefrom of extraordinary pensions and gratuities to the families of deceased employés; and may, with the like sanction, and subject to the like control, repeal, add to or alter such rules.”

New section 35A.

18. After section 35 of the said Act the following shall be inserted, namely:—

“35A. A District Board may, from time to time, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor, make rules—

- (a) for the creation and management of a Provident Fund for its several establishments;
- (b) for compelling members of its establishments to make contributions to such Fund;
- (c) for supplementing such contributions by grants from the District Fund; and
- (d) for the payment of moneys out of such Provident Fund;

and may, with the like sanction and subject to the like control, repeal, add to, or alter such rules.”

Amendment of section 36.

19. In the proviso to section 36 of the said Act, before the words “Local Board” the words “District Board, or of the” shall be inserted, and for the words “is subordinate” the words and figures “may have been declared by an order under section 119 to be, for the purposes of this section, subordinate” shall be substituted.

New section 41A.

20. After section 41 of the said Act, the following shall be inserted, namely:—

“41A. Every Union Committee shall, from time to time, Chairman of Union elect one of its members to be Chairman of the Committee.”

Amendment of section 44.

21. In section 44 of the said Act,—

- (a) for the words “the Local Board to which it is subordinate as hereinafter provided,” the words and figures “the District Board or of the Local Board to which the Committee may have been declared by an order under section 119, to be, for the purposes of this section, subordinate” shall be substituted, and
- (b) for the words “the Local Board,” the words “the aforesaid District Board or Local Board” shall be substituted.

Addition to section 48.

23. To section 48 of the said Act, the following shall be added, namely:—

“Explanation.—Alterations or modifications may be made or directed by the Commissioner under this section on any of the grounds mentioned in the penultimate paragraph of section 47.”

Addition to section 50.

24. To section 50 of the said Act, the following shall be added, namely:—

“Provided that no loan shall be raised for the purpose of constructing and maintaining a railway or tramway under the provisions of section 80, unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted.”

Amendment of section 52.

25. (1A) After clause (7) of section 52 of the said Act the following shall be inserted, namely:—

“(7a) all sums received under any loan raised under section 50.”

(1) For clause (3) of the said section 52 the following shall be substituted namely:—

“(3) all sums directed by notification under section 31 of the Castle-trespass Act, 1871, to be placed to the credit of the Fund.”

I of 1871.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Claves 26.)

(2) After clause (5) of the said section 52 the following shall be inserted, namely:—

“(5a) all receipts accruing within the district from tolls or leases under Part III, heading D(1), of this Act.”

(3) Before the final sentence of the said section 52 the following shall be inserted, namely:—

“The balance of the District Road Fund mentioned in clause (1) of this section shall be placed to the credit of the District Fund under a separate head.”

Amendment of section 53. 26. (1a) In the first line of section 53 of the Bengal Local Self-Government Act of 1885, after the words “The District Fund shall” the following shall be inserted, namely:—

Ben. Act III of 1885.

“subject to the provisions of section 109 of the Cess Act, 1880, as amended by this Act.”

Ben. Act IX of 1880.

(1) In clause *Fourthly* of the said section 53, after the figures “35” the following shall be inserted, namely:—

“and of any grants made for supplementing contributions by members of such establishments to any Provident Fund created under section 35A.”

(2) For clause *Fifthly* of the same section, the following shall be substituted, namely:—

“*Fifthly.*—To the payment of—

(a) expenses incurred by the District Board in—

(i) the construction, repair and maintenance of any works which may become vested in, or be placed under the control and administration of, such Board under Part III of this Act;

(ii) the acquisition, by purchase or otherwise, of offices for the use of the District Board, or of a house and land for the residence of the District Engineer, or the acquisition of land for, and the construction of, such offices or house; and

(iii) the performance of duties imposed, and the exercise of powers conferred by this Act;

(aa) advances granted to members of the establishments of the District Board for the purpose of enabling them to acquire or construct residences for themselves;

(b) any contribution made by the District Board under Part III of this Act; and

(c) any sums assigned by the District Board to a Local Board or Union Committee under this Act.”

(3) In clause *Sixthly* of the same section, for the words “of the travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee,” the following shall be substituted, namely:—

“(a) of travelling expenses incurred by delegates of the District Board in attending meetings convened under the rules made by the Lieutenant-Governor in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a Member of the Lieutenant-Governor’s Council;

[C. Ben. Act III of 1892, s. 30(4).]

35 & 36 Vict. c. 14.

(b) of travelling expenses incurred by members of the District Board or any Local Board in attending meetings of the District Board or Local Board or meetings of a Committee or Joint Committee; and

(c) in such cases, if any, as the Lieutenant-Governor may direct, of travelling expenses incurred by members of the District Board or any Local Board in performing journeys for carrying out other objects of this Act.”

(4) In proviso (1) to the said section 53, after the word “that” the words, figures and letter “except as is provided in section 99A” shall be inserted.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 26A-52.)

(5) After proviso (2) to the said section 53 the following shall be inserted, namely:—

"(3) that the application of the balance of the District Fund mentioned in clause (1) of section 52 of this Act to any object other than those referred to in section 109 of the Cess Act, 1880, as amended by this Act, shall be subject to such rules as the Lieutenant-Governor may prescribe."

Ben. Act IX
of 1880.

New section 53A.

26A. After section 53 of the Bengal Local Self-Government Act of 1885 the following shall be inserted, namely:—

Ben. Act III
of 1885.

"53A. If any deviation from the provisions of this Act,

Temporary or accidental deviations from provisions relating to crediting or application of District Road Fund.

Ben. Act IX
of 1880.

or of any rule made hereunder, or of section 109 of the Cess Act, 1880, as amended by this Act, relating to the crediting or application of the balance of the District Road Fund mentioned in clause (1) of section 52 of this Act, is shown to the satisfaction of the Lieutenant-Governor to have been of temporary duration or of an accidental character, he may cause a declaration to be made to that effect;

and such deviation shall thereupon be deemed to be valid, notwithstanding any of the provisions hereinbefore referred to."

Amendment of sec-
tion 56.

27. For clause (1) of section 56 of the Bengal Local Self-Government Act of 1885, the following shall be substituted, namely:—

Ben. Act III
of 1885.

"(1) all sums directed by notification under section 31 of the Cattle-trespass Act, 1871, to be placed to the credit of the Fund."

1 of 1871.

Amendment of sec-
tion 58.

28. In section 58 of the Bengal Local Self-Government Act of 1885, for the words "Local Board" the words "District Board" shall be substituted.

Ben. Act III
of 1885.Amendment of sec-
tion 59.

29. In section 59 of the said Act, for the letter "D" the letter "E" shall be substituted.

Amendment of sec-
tion 60.

29A. In section 60 of the said Act, for the letter "E" the letter "F" shall be substituted.

New section 61.

30. For section 61 of the said Act, the following shall be substituted, namely:—

"61. Every District Board shall perform such functions as may be transferred to it by notification under section 31 of the Cattle-trespass Act, 1871."

1 of 1871.

New section 63.

31. For section 63 of the Bengal Local Self-Government Act of 1885, the following shall be substituted, namely:—

Ben. Act III
of 1885.

"63. The District Board may, subject to any rules made by the Lieutenant-Governor under this Act,—

(a) with its own consent, be charged with, and made responsible for, the maintenance and management of any other schools or class of schools within the district; or

(b) make grants in aid of any such schools, whether the same be under public or private management."

New section 64A.

32. After section 64 of the said Act, the following shall be inserted, namely:—

"64A. The District Board may, subject to any rules made by the Lieutenant-Governor under this Act,—

Provision, maintenance and management of stu-
dent's hostels.

(a) provide buildings to be used as students' hostels in connection with schools for the maintenance and management of which the Board is responsible under section 62 or section 63, and maintain and manage such hostels; or

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(Clauses 33-36.)

(b) make grants in aid of any school referred to in section 63 or section 64, or any other school, college or educational institution, for the purpose of providing buildings to be used as students' hostels in connection with such school, college or institution, or for the purpose of maintaining and managing such hostels"

Amendment of section 33.

33. In section 65 of the said Act, for the words "the improvement of primary schools within the district under private management," the following shall be substituted, namely :—

- (a) the improvement of any schools or class of schools within the district under private management; or
- (b) the maintenance or improvement of any schools or class of schools maintained and managed by the District Board; or
- (c) the provision of buildings to be used as students' hostels in connection with any school referred to in section 64, or in clause (a) or clause (b) of this section, or any other school, college or educational institution, and the maintenance and management of such hostels."

New sections 65A and 65B.

34. After section 65 of the said Act the following shall be inserted, namely :—

"65A. The hostels referred to in sections 64A and 65 may be situated either within the area directly subject to the authority of the District Board, or within any place or town lying within that area in which the Bengal Municipal Act, 1884, is for the time being in force.

Bengal Act III of 1884.

"65B. (1) Every District Board shall appoint, to be members of an Education Committee,—

- (aa) the Deputy Inspector of Schools;
- (a) three members of the District Board; and
- (b) not more than three residents of the district not being members of the District Board.

(2) The appointment of any person referred to in clause (b) of sub-section (1) to be a member of an Education Committee shall be subject to the approval of the Commissioner;

and, when his appointment has been so approved, such person shall, for the purposes of sub-clause (b) of clause Sixthly of section 53, be deemed to be a member of the District Board.

(3) It shall be the duty of an Education Committee, subject to the control of the District Board and to any rules made by the Lieutenant-Governor under section 138,—

- (i) to superintend all matters connected with the finances, accounts, maintenance and management of all schools maintained by the District Board, and
- (ii) to determine the conditions to be complied with when grants are made by the District Board in aid of other schools.

(4) Nothing in the foregoing sub-sections shall apply to schools referred to in section 64."

Addition to section 35.

35. To section 67 of the Bengal Local Self-Government Act of 1885 the following shall be added, namely :—

Bengal Act III of 1885.

"A District Board may also provide for—

- (a) the training and employment of compounders, midwives and veterinary practitioners; and
- (b) the promotion of free vaccination."

Addition to section 70.

36. To section 70 of the said Act the following shall be added, namely :—

"or defray the expenses of any such inhabitants for journeys to and from any hospital established in any part of British India for the treatment of special diseases."

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 37-41.)

Amendment of section 73.

37. In section 73 of the said Act, after the words "for the purposes of this Act" the words and figures "but subject to the provisions of Chapter III of Part III thereof" shall be inserted.

New section 78 A.

38. After section 78 of the said Act the following shall be inserted, namely:—

"78A. The District Board may, with the sanction of the Commissioner, turn, divert, discontinue or permanently close any road which is under the control and administration of, or is vested in, the District Board."

Amendment of section 82.

39. (1) In section 82 of the said Act, for the words "Lieutenant-Governor" the words "Governor General in Council" shall be substituted.

(2) To the same section the following shall be added, namely:—

"Provided that no application for the said sanction shall be made, in the case of a railway or tramway, unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted."

Addition to section 86.

40. To section 86 of the said Act the following shall be added, namely:—

"and the power of the District Board to make any contribution under section 79 shall be subject to any rules, made by the Lieutenant-Governor under this Act, prescribing conditions precedent to the making of such contribution."

New heading and new sections 86A to 86L.

41. After section 86 of the said Act the following shall be inserted, namely:—

"D(1).—Tolls on Bridges.

42A. The District Board, with the sanction of the Lieutenant-Governor, may establish a toll-bar—

Power of District Board to establish toll-bars and levy tolls.

[Cf. Ben. Act III of 1884, s. 159 (1).]

(i) on any bridge in the district which has, after the date of the commencement of the Bengal Local Self-Government (Amendment) Act, 1908, been constructed or purchased out of the District Fund, or to the cost of the construction or purchase of which contribution has, after the said date, been made out of the District Fund; or

(ii) on any road-way or foot-way of a railway-bridge which has, after the said date, at the instance of the District Board and out of the District Fund, been so constructed or widened as to allow the passage of persons, vehicles or animals; or

(iii) at any place in the district, adjacent to any bridge referred to in clause (i) or clause (ii), at which tolls may conveniently be levied;

and may levy tolls at such toll-bar on persons, vehicles and animals passing over such bridge, road-way or foot-way:

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(Clause 41.)

Provided as follows:—

(1) no toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering—

- (a) the expenses incurred by the District Board in constructing, purchasing, contributing to or widening such bridge, road-way or foot-way,
- (b) interest on such expenses, at the rate of four *per centum per annum*, and
- (c) the capitalised value of the estimated cost to the District Board of maintaining such bridge, road-way or foot-way, and of renewing it, if it requires periodical renewal;

(2) no toll-bar shall be established, or tolls levied, on or in respect of any bridge, road-way or foot-way, the cost or estimated cost of which, as indicated in clauses (a) and (c) of proviso (1), was or is less than ten thousand rupees.

“86B. The District Board may grant a lease, for any period. [Cf. Ben. Act III of 1884, a. 164.]
Lease of toll-bar. not exceeding three years, of any toll-bar established under section 86A of this Act.

“86B B. When the District Boards of two adjacent districts, having jointly constructed, purchased or contributed towards the cost of a bridge, etc.—Procedure where two District Boards have contributed towards cost of bridge, etc.—widening of a bridge, road-way or foot-way, have received sanction under section 86A of this Act to the establishment of a toll-bar, the tolls shall be levied or granted in lease by such District Board as the Lieutenant-Governor may, in his order according sanction, direct; and the proceeds of such tolls, or of the lease thereof, shall be adjusted between the two District Boards according to rules made in this behalf by the Lieutenant-Governor.

“86C. (1) The following persons and things shall be exempted from payment of tolls at any toll-bar established under section 86A of this Act, namely:— [Cf. Ben. Act III of 1884, a. 164.]

- (a) Government stores, and persons in charge thereof;
- (b) police-officers and other public officers travelling on duty, District Board officers so travelling, persons in the custody of any of the officers aforesaid, property belonging to or in the custody of any of the officers aforesaid, and vehicles and animals employed by any of the officers aforesaid for the transport of such persons or property;
- (c) conservancy carts and other vehicles and animals belonging to the District Board, and persons in charge thereof; and
- (d) any other class of persons or things which may be exempted by order of the District Board.

(2) In granting a lease of any toll-bar, the District Board may stipulate that any servants and property of the District Board and any other persons and things shall be exempted from payment of tolls thereat.

“86D. (1) When it has been determined that tolls shall be levied at any toll-bar established under section 86A of this Act, the District Board [Cf. Ben. Act III of 1884, a. 160.]
Rates of tolls. shall make and publish an order specifying the rates at which the tolls shall be levied.

(2) Such rates shall be subject to the sanction of the Commissioner, and may from time to time be varied with the like sanction.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clause 42.)

“86E. (1) A table of such tolls, legibly printed or written [Cf. Ben. Act in the vernacular of the district, shall be III of 1884, s. 165.]
Table of tolls to be hung up in some conspicuous position near every such toll-bar, so as to be easily readable by all persons required to pay the tolls.

(2) In default of compliance with sub-section (1) of this [Cf. Ben. section, the toll-collector, or the lessee of the toll-bar, as the case Act III of 1884, s. 166.] may be, shall be liable to fine which may extend to fifty rupees, and to a further fine which may extend to ten rupees for each day after the first during which the default continues.

“86F. The District Board, or the lessee of any toll-bar, may [Cf. Ben. compound with any person for a certain Act III of 1884, s. 167.]
Power to compound for tolls. sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the rates specified under section 86D of this Act.

“86G. Any toll-collector or lessee of a toll-bar established [Cf. Ben. under section 86A of this Act may refuse to 1884, s. 161.]
Power of toll-collector or lessee in case of refusal to pay toll. allow any person to pass through the toll-bar until the proper toll has been paid.

“86H. Whoever, having rendered himself liable to the [Cf. Ben. payment of toll, refuses to pay the toll, Act III of 1884, s. 162.]
Penalty for refusing to pay toll. shall be liable to fine which may extend to fifty rupees.

“86J. If resistance is offered to any person authorized under [Cf. Ben. Police-officers to assist. Act III of 1884, s. 169.] this Chapter to collect tolls, any Police-officer whom he may call to his aid shall be bound to assist him; and such Police-officer shall, for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

“86K. If any person authorized under this Chapter to [Cf. Ben. collect tolls demands or takes any higher Act III of 1884, s. 170.]
Penalty for taking unauthorized tolls. tolls than the tolls authorized under this Chapter, he shall be liable to fine which may extend to fifty rupees, and, in default of payment, to imprisonment for a term which may extend to one month.

“86L. (1) When a toll-bar has been established and tolls [Cf. Ben. Act III of 1884, s. 168.]
District Board to publish expenses, etc., of toll-bars. have been levied, under section 86A of this Act, in respect of any bridge, road-way or foot-way, the District Board shall, at the end of each financial year, publish, by causing to be posted up at their office, an abstract account showing—

- (a) the amount of the expenses incurred by the District Board in constructing, purchasing, contributing to or widening the bridge, road-way or foot-way;
- (b) the amount of interest which has accrued due on such expenses;
- (c) the capitalised value of the estimated cost to the District Board of maintaining the bridge, road-way or foot-way, and of renewing it, if it requires periodical renewal; and
- (d) the amount which has been received from the profits of the said toll-bar since its establishment.

(2) As soon as such expenses, interest, and capitalised value have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied in respect of such bridge, road-way or foot-way.”

42. After section 88 of the said Act, the following shall be inserted, namely:—

“88A. A District Board may, with the sanction of the [Cf. Ben. Act Lieutenant-Governor, contribute such annual III of 1885, s. 69.]
Power to contribute towards cost of Municipal or other sum as may be agreed upon towards water-supply. the cost of the construction, repair and maintenance, under the provisions of the Bengal Municipal Act, 1884, of water-works, wells or tanks within the district.”

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(Clauses 43A—45.)

New section 91.

42A. For section 91 of the Bengal Local Self-Government Act of 1885, the following shall be substituted, namely:—

Ben. Act III
of 1885.

"91. (1) Every District Board shall appoint, to be members of a Sanitation Committee, not more than five nor less than three members of the Board.

Constitution and functions of Sanitation Committees, and appointment of Sanitary Inspector.

(2) It shall be the duty of a Sanitation Committee, subject to the control of the District Board and to any rules made by the Lieutenant-Governor under section 138, to initiate and supervise works connected with the sanitation of the district, and to exercise such of the powers of the District Board as may be delegated to it in accordance with such rules.

(3) The District Board shall also appoint a properly qualified person to be its Sanitary Inspector, and, subject to the provisions of section 33, fix the salary of such Sanitary Inspector and the details of the establishment subordinate to him.

(4) The Lieutenant-Governor may, for reasons which may to him appear to be sufficient, exempt any District Board wholly or partially from the operation of this section."

Amendment of sec-
tion 99.

43. (1a) In the heading over section 99 of the said Act, for the word "Relief" the words "and Distress" shall be substituted.

(2) To the said section the following shall be added, namely:—

"(4) distribute such gratuitous relief, in the form of doles of money or food, as may be necessary."

New section 99A.

44. After section 99 of the said Act, the following shall be inserted, namely:—

"99A. It shall be lawful for a District Board, with the sanction of the Commissioner, to incur expenditure on irrigation works for relief of famine or any local irrigation work which may appear necessary, to it to be necessary for the purpose of preventing, or mitigating the effects of, famine or scarcity within its district:

Provided that no such expenditure shall be incurred, unless such irrigation work has been sanctioned by the Lieutenant-Governor as a relief work in accordance with rules made under this Act."

Amendment of sec-
tion 100.

45. (1) In section 100 of the said Act, for the words "subject to any rules made by the Lieutenant-Governor," the words "subject to such rules and restrictions as the Lieutenant-Governor may, from time to time, prescribe" shall be substituted.

(1a) In clause (3) of the said section, for the word "its," the word "the" shall be substituted.

(2) After the said clause (3), the following shall be inserted, namely:—

"(3a) establish and maintain veterinary dispensaries for Veterinary Dispensaries. the reception and treatment of horses, cattle and other animals, and charge such fees for the use of such dispensaries as may from time to time be approved by the Commissioner;

(3b) appoint and pay qualified persons to prevent and treat Treatment of diseases diseases of horses, cattle and other animals;

(3c) provide for the improvement of the breed of horses, cattle or asses, and for the breeding of animals, breeding of mules;

(3d) make grants in aid of measures for improving Grants in aid of agri- agriculture or for carrying cultural and veterinary improvements. out any of the objects specified in clause (3a) or clause (3c), and."

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(Clauses 46—53.)

Amendment of section 104. 46. In section 104 of the said Act, for the words "Local Board," in both places in which they occur, the words "District Board" shall be substituted.

Amendment of sections 105 to 107. 47. (1) In sections 105, 106 and 107 of the said Act, for the words "Local Board," wherever they occur, the words "District Board" shall be substituted.

(2) In the said section 105, for the words "an estimate of the probable expenditure of the Committee," the words "an estimate of the probable receipts and expenditure of the Committee under each head of account" shall be substituted.

(3) To the said section 105, the following shall be added, [Cf. Ben. Act III of 1894, s. 76.] namely—

"Every estimate submitted under this section shall be subject to the sanction of the District Board, who may, before sanctioning any estimate, modify it as they may think fit."

(4). In the said section 107, after the words "village roads," the words "and bridges thereon" shall be inserted.

Amendment of sections 108 and 109. 48. (1) After the words "village-roads", in section 108 of the said Act, and where they first occur in section 109 thereof, the words "and bridges thereon" shall be inserted.

(2) In the said section 108, after the words "such roads," the words "and bridges" shall be inserted.

Amendment of section 110. 50. In section 110 of the said Act,—

(a) for the words "Local Board," in the first and third places in which they occur, the words "District Board" shall be substituted; and

(b) for the words "Local Board," in the second place in which they occur, the words "District Board or of a Local Board" shall be substituted.

New section 111. 51. For section 111 of the said Act, the following shall be substituted, namely :— [Cf. Ben. Act III of 1894, s. 111.]

"111. Every Union Committee shall perform such functions as may be transferred to it by notification under section 31 of the Cattle-trespass Act, 1871."

New section 114. 52. For section 114 of the said Bengal Local Self-Government Act of 1885, the following shall be substituted, namely :— [Cf. Ben. Act III of 1885.]

"114. A Union Committee shall, if required to do so by the Magistrate of the district, provide for the registration of births and deaths within the Union, and shall submit such returns thereof as the said Magistrate may direct."

New sections 115 to 119. 53. For sections 115 to 119 of the said Act, the following shall be substituted, namely :—

"115. Every Union Committee shall, subject to the control of the District Board, and in accordance with rules made by the Lieutenant-Governor under this Act,—

(1) provide, as far as possible, for the sanitation and conservancy of the Union and the prevention of public nuisances therein;

(2) make special arrangements for the sanitation and conservancy of fairs and *melas* held within the Union;

(3) have control of all drains and other conservancy works within the Union which are not under the control of any other authority; and

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(Clause 53.)

(4) execute all works which are necessary for improving the sanitation, conservancy or drainage of the Union:

Provided that the District Board may itself undertake any such work which, by reason of its magnitude, or of the amount of expense likely to be incurred thereon, cannot, in the opinion of the District Board, be satisfactorily executed by the Union Committee.

"118. (1) If it appears to the Union Committee that, for any reason, it is necessary to improve the sanitary condition of any village or part of a village within the Union, the Committee may, in accordance with a scheme approved by the District Board and sanctioned by the Commissioner under rules made by the Lieutenant-Governor under this Act,—

- (a) cause huts or privies to be removed, either wholly or in part;
- (aa) cause private drains to be constructed, altered or removed;
- (b) cause streets, passages and public drains to be constructed or widened;
- (c) cause tanks or low lands to be filled up or deepened; and
- (d) cause such other improvements to be made as, in its opinion, are necessary to improve the condition of such village or part.

(2) The Union Committee may, by written notice,—

- (i) require the owner or occupier of any hut, or the owner of any privy, to remove such hut or privy, either wholly or in part, in pursuance of clause (a) of sub-section (1); or
- (ii) require the owner or occupier of any building to construct private drains therefor, or to alter or remove private drains thereof, in pursuance of clause (aa) of sub-section (1), within a period to be specified in the notice.

(3) If any work required by any such notice is not executed within the period specified in the notice, the Union Committee may themselves cause such work to be carried out.

(4) All expenses incurred by the Union Committee under sub-section (1) or sub-section (3), including such reasonable compensation as the Committee may think fit to pay to the owners or occupiers of huts or privies removed, shall be met out of the Union Fund.

"117. (1) The Union Committee may, with the sanction of the District Board, employ a special establishment for the cleansing of any village within the Union.

(2) If any village for which no establishment is maintained under sub-section (1) appears to the Union Committee to be in a filthy condition, the Committee may, by written notice, require the persons who occupy buildings in the village to cleanse their holdings, to the satisfaction of the Committee, within a period to be specified in the notice.

(3) If any person on whom notice has been served under sub-section (2) fails to comply with the requisition contained in the notice, the Union Committee shall,

unless reasonable cause to the contrary is shown, cause his holding to be cleansed, and recover from such person such portion of the costs of such cleansing as may be approved by the Sanitation Committee, as if the same were an arrear of the assessment imposed under the Village-chaukidari Act, 1870, or, where the Chota Nagpur Rural Police Act, 1887, is in force, under that Act.

[Of. Ben. Act
III of 1899,
s. 406.]

[Of. Ben. Act
III of 1899,
s. 406.]

[Of. Ben. Act
III of 1899,
s. 406.]

[Of. Ben. Act
III of 1899,
s. 420.]

Ben. Act VI
of 1870.
Ben. Act V
of 1887.

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(Clause 53.)

" 118. (1) The Union Committee may, subject to rules made by the Lieutenant-Governor under this Act, by written order,—

- (a) direct, in accordance with a scheme approved by the District Board and sanctioned by the Commissioner, in respect of any village, that no building which it is proposed to erect in such village, and no addition to any existing building therein, shall be placed in advance of an alignment to be prescribed by the Committee and demarcated on the ground, and
- (b) prescribe, in accordance with the said scheme, the space which shall intervene between each new building and between new buildings and any road in the village.

(2) Where any building, or any addition thereto, has been placed in contravention of an order passed by the Union Committee under sub-section (1), the Union Committee may apply to the District Magistrate, and such Magistrate may make an order—

- (i) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished by the owner of the building or altered by him to the satisfaction of the Committee, as the case may require, or
- (ii) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished or altered by the Union Committee at the expense of the owner:

Provided that the Magistrate shall not make any such order without giving the owner and occupier full opportunity of adducing evidence and of being heard in defence.

(3) If any person to whom a direction to demolish or alter any building is given under sub-section (2), clause (i), fails to obey the same, he shall be liable to fine which may extend, in the case of a masonry building, to one hundred rupees, and, in the case of any other building, to twenty rupees, and to further fine which may extend, in the case of a masonry building, to ten rupees, and in the case of any other building, to two rupees, for each day during which he so fails after the first day.

" 118A. (1) A Union Committee may provide the Union, or any part thereof, with a supply of water proper and sufficient for public and private purposes; and, for the purposes of this section, may—

- (a) construct, repair and maintain tanks or wells, clear out streams or water-courses, and do any other necessary acts;
- (b) with the sanction of the District Board, purchase or acquire by lease any tank, well, stream or water-course, or any right to take or convey water, within or without the Union;
- (c) with the consent of the owner thereof, utilize, cleanse or repair any tank, well, stream or water-course within the Union, or provide facilities for obtaining water therefrom;

[Cf. Ben. Act
III of 1899,
Sch. XVII, s.
37.]

[Cf. Ben.
Act III of 1899,
s. 449.]

[Cf. Ben.
Act III of 1899,
s. 680.]

[Cf. 38 & 39
Vict., c. 56, s.
51; 56 & 57
Vict., c. 73, s.
8.]

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clause 53.)

(a) deal with any tank, well, pool, ditch, drain or place containing, or used for the collection of, any drainage, filth, stagnant water or matter likely to be prejudicial to health—by draining or cleansing it, or otherwise preventing it from being prejudicial to health, but not so as in any case to interfere with any private right ; or

(b) contract with any person for a supply of water.

(2) When a Union Committee has, under clause (c), with the consent of the owner, cleansed or repaired, or provided facilities for obtaining water from, any tank, well, stream or water-course, the same shall, subject to any rights retained by the owner with the concurrence of the Committee, be reserved for drinking and culinary purposes, and shall be kept open to access by the public.

(3) Any tank, well, stream or water-course which a Union Committee may construct, repair or maintain under clause (a), or purchase or acquire by lease under clause (b), shall remain under the control and administration of the Union Committee; and the Committee may, by order duly published in the village or villages in which such tank, well, stream or water-course is situated, set apart the same, on, subject to the provisions of clause (c), any other tank, well, stream or water-course within the Union, for the supply of water for drinking and culinary purposes.

"118AA. The Union Committee, or any member, officer or servant thereof, may enter into or upon any building or land, with or without assistants or workmen, in order to make any inspection or execute any work for the purposes of or in pursuance of section 115, section 116, section 117, section 118 or section 118A :

[Cf. Ben.
Act III of 1890;
S. 595; Ben.
Act III of 1884;
S. 101.]

Provided as follows:—

(a) no such entry shall be made between sunset and sunrise;

(b) no dwelling-house shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry; and

(c) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

"118B. (7) If the income of the Union Committee from other sources is insufficient to meet the expenses incurred, or likely to be incurred, by the Committee in carrying out its duties or exercising its powers under section 115, section 116, section 117, section 118 or section 118A,

the Committee may, from time to time, impose on the owners or occupiers of property within the Union, or in any village therein, such assessment as may be required approximately to meet the deficiency, together

Method of meeting cost
of works of sanitation,
drainage and sewer-
vancy of villages.

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(Clause 59.)

with ten per cent. above such sum to meet the expenses of collection and losses due to non-realization of their shares from defaulters :—

Provided that such assessment shall not be imposed unless :—

(i) it is authorised by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the Union Committee have voted, and

(ii) it is previously sanctioned by the District Board and the Commissioner.

(2) The provisions of sections 15 to 20, 22, 25 to 34, 47 and 63 of the Village-chaukidari Act, 1870, or, where the Chota Nagpur Rural Police Act, 1887, is in force, the provisions of sections 8 to 11, 13, 15 to 21, 34 and 36 of that Act, shall apply to such assessment and the payment and recovery thereof:

Ben. Act VI
of 1870.
Ben. Act V
of 1887.

Provided as follows :—

(a) all references in any of the said sections of the Village-chaukidari Act, 1870, to a panchayat shall be construed as references to the Union Committee;

Ben. Act VI
of 1870.

(b) all references in any of the said sections of the Chota Nagpur Rural Police Act, 1887, to the Deputy Commissioner or the District Superintendent of Police shall be construed as references to the Union Committee;

Ben. Act V
of 1887.

(c) the amount to be assessed on any one person shall not exceed seven rupees per mensem;

(d) the amount assessed on any person may be made payable either in lump or in periodical instalments;

(e) the sum which may be retained by the collecting member of the Committee to repay the costs of collection shall not exceed five per cent. of the collections : and

(f) the proceeds of the said assessment shall be credited to the Union Fund.

“11BC. Any person who is aggrieved by any order of a
Appeals against orders.
awards and assessments. Union Committee—

(i) directing such person to take any action with regard to his property under sub-section (2) of section 116, sub-section (8) of section 117, or sub-section (7) of section 118 ; or

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(Clauses 55-58.)

(ii) awarding or refusing to award compensation to such person under sub-section (4) of section 116; or

(iii) making an assessment in respect of any holding of such person in accordance with the provisions of section 118B;

may, within three months from the date of such order, appeal to a sub-committee of members of the District Board to be constituted under clause (a) of section 32 of this Act; and the decision of such sub-committee shall, subject to the exercise of a power of revision at the discretion of the Commissioner, be final.

" 119. (1) Notwithstanding anything in the foregoing provisions of this Act, the District Board to subordinate Union may, by order in writing, with the sanction of the Commissioner, direct that any specified Union Committee shall act as the agent of, and shall be subject to the control of, a Local Board, instead of the District Board, either for all purposes or for the purposes specified in the order.

(2) Any order made under sub-section (1) may, with the like sanction, be revoked.

(3) So long as an order made under sub-section (1) with respect to any Local Board continues in force, the references to the District Board in the foregoing sections of this Act shall, so far as may be necessary, be read as if made to such Local Board."

*Amendment of sec-
tion 130.* 55. (1) In the first paragraph of section 130 of the said Act,—

(a) after the figures "124" the figures "125" shall be inserted, and

(b) for the words "by the Local Board" the words and figures "by the District Board or the Local Board to which the Committee may have been declared, by an order under section 119, to be, for the purposes of this section, subordinate" shall be substituted.

(2) In the third paragraph of the same section, after the words "Local Board" the words "or Union Committee" shall be inserted.

*Amendment of sec-
tion 131.* 56. In section 131 of the said Act, after the words "Local Board," in both places in which they occur, the words "or Union Committee" shall be inserted.

*Amendment of sec-
tion 132.* 57. In section 132 of the said Act,—

(1) after the words "Local Board," in the first four places in which they occur, the words "or Union Committee" shall be inserted, and

(2) after the words "the Board," in the second place in which they occur, the words "or Committee" shall be inserted.

New section 133. 58. For sections 133 and 134 of the said Act the following shall be substituted, namely:—

" 133. (1) If a dispute arises between two or more Union Committees which are subordinate to the same District Board, or which have been referred to District Board or Local Board, declared by any order under section 119 to be, for the purposes of this section, subordinate to the same Local Board, the matter shall be referred to such District Board or Local Board, as the case may be, and the decision of the Board thereon shall be final and binding.

*Disputes between two or
more Union Committees
when to be referred to
District Board or Local
Board.*

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clause 59.)

(2) If a dispute arises between two or more Union Committees within the same district, and such Committees have not all been so declared to be subordinate to the same Local Board, the matter shall be referred to the District Board; and the decision of the District Board thereon shall be final and binding."

Amendment of section 138. 59. (1) To clause (a) of section 138 of the said Act the following shall be added, namely:—

[C. of Ben. Act III of 1884, s. 15.]

"and determining the authority who shall decide disputes relating to such elections."

(2) In clause (f) of the same section, for the word "immediate" the word "intermediate" shall be substituted.

(3) To clause (g) of the same section, the following shall be added, namely:—

"and declaring what circumstances shall be a disqualification for continuance of employment under that section."

(4) After clause (h) of the same section, the following shall be inserted, namely:—

"(h1) prescribing the conditions on which a house and land may be acquired or on which land may be acquired and a house constructed, by the District Board, for the residence of the District Engineer, and the terms on which the District Engineer may be required to occupy the same;"

"(h2) regulating the application of the balance of the District Fund mentioned in clause (1) of section 52 of this Act to objects other than those mentioned in section 109 of the Cess Act, 1880, as amended by this Act."

[Ben. Act IX of 1880.]

(5) After clause (j) of the same section the following shall be inserted, namely:—

"(j1) prescribing the conditions subject to which grants in aid may be made under section 63 or section 64A;

(j2) regulating the provision, maintenance and management of students' hostels under section 64A;

(j3) prescribing the powers and duties of Education Committees, and regulating the removal of members from office."

(6) To clause (k) of the said section 138 the following shall be added, namely:—

"the training and employment of compounders, midwives and veterinary practitioners, and the promotion of free vaccination."

(7) To clause (m) of the same section the following shall be added, namely:—

"and prescribing conditions precedent to the making of any contribution under section 79."

(8) After clause (m) of the said section 138, the following shall be inserted, namely:—

"(mm) prescribing, for the purposes of section 86A of this Act, the mode of ascertaining the capitalised value of the estimated cost to the District Board of maintaining bridges, road-ways or foot-ways, and of renewing any bridge, road-way or foot-way which requires periodical renewal, and the mode of determining what classes of bridges, road-ways or foot-ways require periodical renewal."

(mmmm) prescribing, for the purposes of section 86BB, the method in which the proceeds of tolls, or of the lease thereof, shall be adjusted between the District Boards of adjacent districts."

(8a) In clause (n) of the said section 138, after the words "District Boards" the words "and Sanitation Committees" shall be inserted.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clauses 60-64.)

(9) After clause (o) of the said section 138, the following shall be inserted, namely:—

“(o1) regulating the duties of District Boards in regard to ‘famine relief.’”

(10) In clause (p) of the same section, after the word “animals” the following shall be inserted, namely:—

“the establishment and maintenance of veterinary dispensaries, the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals, the improvement of the breed of horses, cattle or asses, and the breeding of mules, the making of grants in aid under clause (3d) of section 100 of this Act.”

(11) After clause (q) of the same section the following shall be inserted, namely:—

“(qq) regulating the powers and duties of Union Committees in regard to sanitation, conservancy and drainage under sections 115 to 118A (both inclusive), and defining and prohibiting public nuisances within Unions.”

(12) To the same section the following shall be added, namely:—

“In making any rule under clause (qq) of this section, the Lieutenant-Governor may provide that a breach of the same shall be punished with fine which may extend to ten rupees.”

Amendment of section 139.

60. In section 139 of the said Act,—

(a) before the words “make by-laws” the words “subject to the control of the Lieutenant-Governor” shall be inserted; and

(b) for the words “confirmed by the Lieutenant-Governor” the words “confirmed by the Commissioner” shall be substituted.

Amendments of section 142.

61. In section 142 of the said Act, before the words “or Union Committee” the words “Local Board” shall be inserted.

Addition to section 144.

62. To section 144 of the said Act the following shall be added, namely:—

“Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.”

Amendment Schedule II.

64. In the third column of the second Schedule to the said Act, after the words “shall be credited to the District Fund of the district” the following shall be inserted, namely:—

“and shall be applicable to the following objects, and in the following order, namely:—

(a) the payment of any sums which the District Board may, under the Bengal Local Self-Government Act of 1885, from time to time have undertaken to pay as interest on loans raised for expenditure on any of the objects to which the District Road Fund is applicable, and the repayment of such loans;

(b) the payment of the percentage referred to in clause Thirdly of section 53 of the said Act:

Bengal Act III
of 1885.

Bengal Act III
of 1885.

The Bengal Local Self-Government (Amendment) Bill, 1908.

(Clause 64.)

- (c) the payment of such of the salaries, pensions, gratuities, grants and percentages referred to in clause *Fourthly* of the said section as are required for members of establishments employed for improving the means of communication within the district or between the district and other districts;
- (d) the payment of such of the expenses referred to in clause *Fifthly* of section 53 of the said Act as are incurred in improving the means of communication within the district or between the district and other districts, or in carrying out the provisions of section 79 of the said Act;
- (e) the payment of the expenses referred to in clause *Seventhly* of section 53 of the said Act; and
- (f) the making of investments referred to in clause *Eighthly* of the said section 53."

CALCUTTA,

The 21st July 1908.

F. G. WIGLEY,

Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, AUGUST 19, 1908.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Lieutenant-Governor of Bengal on the 15th August, 1908, and is hereby published for information, together with:—

(1) Statement showing where sections of the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the Bill,

(2) Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Bill,

(3) Statement showing where sections of the Chota Nagpur Commutation Act, 1897 (Ben. Act IV of 1897), are reproduced in the Bill, and

(4) Statement of Objects and Reasons and Notes on Clauses.

THE CHOTA NAGPUR TENANCY AND
SETTLEMENT BILL, 1908.

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THE CHOTA NAGPUR TENANCY AND SETTLEMENT BILL, 1908.

[**NOTES.**—I.—Provisions of the existing law on which the several clauses of the Bill are based are noted, within square brackets, on the right-hand margin of the Bill. In these notes,—

“1879” means the official edition of Ben. Act I of 1879 (the Chota Nagpur Landlord and Tenant Procedure Act), as modified up to the 1st March, 1904;

“1885” means the official edition of Act VIII of 1885 (the Bengal Tenancy Act, 1885), as modified up to the 31st May, 1907;

“1897” means the official edition of Ben. Act IV of 1897 (the Chota Nagpur Commutation Act, 1897), as modified up to the 30th September, 1908; and

“Notfn.” means Notification No. 1879L.R., dated the 5th March, 1908, by which portions of the Bengal Tenancy Act, 1885 (as amended by Bengal Acts III of 1898 and I of 1907), were extended to the Chota Nagpur Division except the district of Manbhum.

II.—Substantive amendments which it is proposed to make in the existing law are, as far as possible, printed in antique type, and amendments made in the Bill after the date of its publication in the Calcutta Gazette are marked with lines.]

A

BILL

to amend and consolidate certain enactments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rents in Chota Nagpur;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:

55 & 56 Vict.
c. 14.

CHAPTER I.

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Chota Nagpur Tenancy [1879, s. 1.
and Settlement Act, 1908; 1897, s. 1.]

(2) It extends to the Chota Nagpur Division, except the district of Manbhum; and

(3) The Lieutenant-Governor may, by notification, extend the whole or any portion of this Act to the said district of Manbhum or to any part thereof.

Repeals. 2. (1) The Acts and notification specified in Schedule A are hereby repealed in the Chota Nagpur Division, except the district of Manbhum.

(2) When this Act is extended to the district of Manbhum [s. 1885, s. 2.
or any part thereof, the Acts specified in Schedule B shall [s. 1.
be deemed to be repealed in that district or part, as the case may be; or, if only a portion of this Act is so extended, then so much of the said Acts as is inconsistent with that portion shall be deemed to be so repealed.

Definitions. 3. (1) In this Act, unless there is anything repugnant in the subject or context,—

(i) “agricultural year” means the year prevailing in a [1885, s. 3
local area for agricultural purposes; (11).]

(ii) “Bhugut bandha mortgage” means a transfer of the [1897, s. 3(d).]
interest of a tenant in his tenancy, [1879, s. 2(e).]
for the purpose of securing the payment of money advanced or to be advanced by way of loan,
upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the tenancy during the period of the mortgage;

(iii) “Board” means the Board of Revenue for Bengal;

(iv) “Certificate Officer” means the Certificate Officer as [1879, s. 2(b).]
defined in clause (2) of section 4 of the Public Ben. Act I of Demands Recovery Act, 1895;

(v) “civil jail” means the civil jail of the district, and [1879, s. 2.]
includes any place appointed by the Local Government for the confinement of prisoners under this Act;

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter I.—Preliminary.—Clause 3.)

(vi) "Commissioner" and "Judicial Commissioner" mean [1879, s. 2.] respectively the Commissioner and Judicial Commissioner of Chota Nagpur; and include any other person specially empowered by the Local Government to discharge the functions of the Commissioner or Judicial Commissioner, as the case may be, in any particular area;

(vii) "Deputy Collector" includes an Assistant Collector [1879, s. 2.] or any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Collector under this Act;

(viii) "Deputy Commissioner" includes—

- (a) any Revenue-officer who is specially empowered [1879, s. 2(c).] [1885, s. 3.] by the Local Government to discharge any of the functions of a Deputy Commissioner under this Act;
- (b) any Revenue-officer or Deputy Collector to whom [1879, s. 133.] the Deputy Commissioner may, by general or special order, transfer any of his functions under this Act, and
- (c) any Deputy Collector who is in charge of a sub-division [1879, s. 133.] of a district, or is specially empowered by the Local Government to discharge any of the functions of a Deputy Commissioner under this Act;

(ix) "estate" means land included under one entry in [1885, s. 3(1).] & Notfn. any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Deputy Commissioner of a district, and includes Government khas mahals and revenue-free lands not entered in any register;

(x) "holding" means a parcel or parcels of land held by a [1879, s. 2(4).] raiyat and forming [the subject of a separate 1885, s. 3(9).] tenancy;

(xi) "Korkar" means land, by whatever name locally [1879, s. 6.] para. 4.] known, such as babbala, khandwat, sajhwat, jalsasan or ariat, which has been artificially levelled or embanked primarily for the cultivation of rice, and—

- (a) which previously was jungle, waste or uncultivated, or was cultivated upland, or which, though previously cultivated, has become unfit for the cultivation of transplanted rice, and
- (b) which has been prepared for cultivation by a cultivator (other than the landlord), or by his predecessor in interest (other than the landlord), with or without the consent of the landlord according as such consent is required or not by section 64;

(xii) "landlord" means a person immediately under whom [1879, s. 2(e).] a tenant holds, and includes the Government; [1885, s. 3(4).]

(xiii) "moveable property" includes standing crops; [1879, s. 2(f).]

(xiv) "Mundari khunt-kattidari tenancy" means the interest [1879, s. 2(1).] of a Mundari khunt-kattidar;

(xv) "Nasir" means any officer of a Court authorized to [1879, s. 2.] serve or execute its process;

(xvi) "pay", "payable" and "payment", used with [1885, s. 3.] reference to rent, include "deliver," "deliverable" and "delivery;"

(xvii) "permanent tenure" means a tenure which is heritable, and which is not held for a limited time;

(xviii) "piedial conditions" mean conditions or services [1897, s. 3 (1)] appurtenant to the occupation of land, other (b) (e.)] than the rent; and include rakumats, payable by raiyats to landlords, and every 'mahtut, mangan and madad, and every other similar demand, howsoever denominated, and whether regularly recurrent or intermittent;

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter II.—Classes of Tenants.—Clause 4.)*

(xix) "prescribed" means prescribed by the Local Government by rule made under section 256;

(xx) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

(xxi) "registered" means registered under any Act for the time being in force for the registration of documents;

(xxii) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant; and includes all dues (other than personal services) which are recoverable under any enactment for the time being in force as if they were rent;

(xxiii) "resumable tenure" means a tenure which is held subject to the condition that it shall lapse to the estate of the grantor and be resumable by him or his successor in title—

(a) on failure of male heirs of the body of the original grantee in the male line, or

(b) on the happening of any definite contingency other than that referred to in sub-clause (a) of this clause;

(xxiv) "Revenue-officer" means any officer whom the Local Government may appoint to discharge any of the functions of a Revenue-officer under this Act;

(xxv) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person;

(xxvi) "tenure" means the interest of a tenure-holder, and includes an under-tenure, but does not include a Mundari khunt-kattidari tenancy; and

(xxvii) "village" means,—

(a) in any local area in which a survey has been made and a record-of-rights prepared under any enactment for the time being in force, the area included within the same exterior boundary in the village map prepared in the course of making such survey and record, as subsequently settled by the decision (if any) of a Court of competent jurisdiction, and

(b) where a survey has not been made and a record-of-rights has not been prepared under any such enactment, such area as the Deputy Commissioner may, with the sanction of the Commissioner, by general or special order, declare to constitute a village.

(2) If it appears to the Local Government to be doubtful what year prevails in any particular local area for agricultural purposes, the Local Government may, by notification, declare upon what dates such year shall be deemed to commence and terminate, respectively.

CHAPTER II.**CLASSES OF TENANTS.****Classes of tenants.**

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats,

(3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under-raiyats, and

(4) Mundari khunt-kattidars;

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter II.—Classes of Tenants.—Chapter III.—Tenure-holders—
Clauses 5—9.)

and the following classes of raiyats, namely—

- (a) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them,
- (b) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy, and
- (c) raiyats having khunt-katti rights.

Meaning of "tenure-holder."

5. "Tenure-holder" means primarily a person who has [1879, s. 2(p).] acquired from the landlord, or from another tenure-holder, a right [1885, s. 6(1).] to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it; and includes—

- (a) the successors in interest of persons who have acquired such a right, and
- (b) the holders of tenures entered in any register prepared ^{Reg. Act II of 1869.} and confirmed under the Chota Nagpur Tenures Act, 1869;

but does not include a Mundari khunt-kattidar.

Meaning of "raiyat."

6. (1) "Raiyat" means primarily a person who has acquired [1879, s. 2(j).] a right to hold land for the purpose of cultivating it by himself, [1885, s. 6(2).] or by members of his family, or by hired servants, or with the aid of partners; and includes the successors in interest of persons who have acquired such a right, but does not include a Mundari khunt-kattidar.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(2) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari khunt-kattidar.

(3) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

- (a) local custom, and
- (b) the purpose for which the right of tenancy was originally acquired.

Meaning of "raiyat having khunt-katti rights."

7. "Raiyat having khunt-katti rights" means a raiyat in occupation of, or having any subsisting title to, lands reclaimed from jungle by the original founders of the village or their descendants in the male line, when such raiyat is a member of the family which founded the village or a descendant in the male line of any member of such family.

Meaning of "Mundari khunt-kattidar."

8. "Mundari khunt-kattidar" means a Mundari who has [1879, s. 2(j).] acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes—

- (a) the heirs male in the male line of any such Mundari, when they are in possession of such land, or have any subsisting title thereto, and
- (b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

CHAPTER III.

TENURE-HOLDERS.

Tenure-holder when not liable to enhancement of rent.

9. No tenure-holder who holds his tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in the Bengal Decennial Settlement Regulation, 1793, section 51, or in any other law, to the contrary notwithstanding.

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter III.—Tenure-holders.—Clauses 10—12.).*

Certain bhuinhars not
liable to enhancement
of rent.

10. No bhuinhar whose lands are entered in any [1879, s. 19,
register prepared and confirmed under the Chota Nagpur para. 1.]
Tenures Act, 1869, shall be liable to any enhancement of the [Bh. Act II of
1869.
rent of his tenure.

Registration of
transfers of tenures.

11. (1) When any tenure or portion thereof is transferred by [1879, s. 24.]
succession, inheritance, sale, gift, mortgage, exchange or
otherwise, the transferee or his successor in title shall cause the
transfer to be registered in the office of the landlord to
whom the rent of the tenure or portion is payable.

(2) Every landlord shall, in the absence of sufficient reason
to the contrary, admit to registry and otherwise give effect to all
such transfers.

(3) Whenever any such transfer is registered in the office
of the landlord, he shall be entitled to levy a registration-
fee of the following amount, namely:—

(a) when rent is payable in respect of the tenure or
portion—a fee of two *per centum* on the annual rent
thereof: provided that no such fee shall be less
than one rupee or more than one hundred rupees,
and

(b) when rent is not payable in respect of the tenure or
portion—a fee of two rupees.

(4) If an application for the registration of any transfer of
a tenure or portion thereof under sub-section (1) is not made
within one year from the date of the transfer, and if the regis-
tration fee prescribed by sub-section (3) is not paid or tendered
within that period, the transferee or his successor in title shall
not be entitled to recover, by suit or other proceeding, any rent
which may have become due to him, as the owner of such
tenure or portion, between the date of the transfer and the date
of the application for registration and deposit of the fee.

(5) Nothing in this section shall—

(i) validate a transfer of any tenure or portion thereof
which, by the terms upon which it is held, or by
any law or any custom having the force of law, is
not transferable, or

(ii) affect the right of the landlord to resume a resum-
able tenure.

(6) The mere registration of a transfer, or the mere receipt of
a registration-fee, under this section, shall not be deemed to imply
a consent to, or permission to make, the transfer, within the
meaning of section 13; and the landlord shall not be bound
by the terms or conditions of any such transfer.

Procedure on
refusal of landlord to
register transfer of
tenure.

12. If any landlord refuses to admit to registry or otherwise [1879 s. 34.]
to give effect to any such transfer as is mentioned in section 11,
the transferee or his successor in title may make application
to the Deputy Commissioner; and the Deputy Commissioner
shall thereupon make such inquiry as he considers necessary;
and, if no sufficient grounds are shown for the refusal, shall pass
an order enjoining the landlord to admit to registry and otherwise
give effect to such transfer:

Provided that no landlord shall be required to admit to
registry or give effect to any division or distribution of the
rent payable on account of any tenure or portion thereof, nor
shall any such division or distribution of rent be valid without
the consent in writing of the landlord.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter III.—Tenure-holders.—Chapter IV.—Occupancy-
raiyats.—Clauses 13—15.)Annulment of
incumbrances on
resumption of
resumable tenure.

13. (1) Upon the resumption of a resumable tenure, every [1879, s. 36A.] lien, sub-tenancy, easement, or other right or interest created, without the consent or permission of the grantor or his successor in interest, by the grantee or any of his successors, on the tenure, or in limitation of his own interest therein, shall be deemed to be annulled, except the following, namely :—

- (a) any lease of land whereupon a dwelling house, manufactory or other permanent building has been erected, or a permanent garden, plantation, tank, canal, place of worship or burning or burying ground has been made, or wherein a mine has been sunk under lawful authority;
- (b) any right of a raiyat or cultivator in his holding or land, as conferred by this Act or by any established custom or usage;
- (c) any right to hold land occupied by a sacred grove, and
- (d) any Mundari khunt-kattidari tenancy.

(2) Nothing in clause (a) of sub-section (1) shall confer on any grantee of a resumable tenure, or any of his successors, any right over minerals which he does not otherwise possess.

CHAPTER IV.

OCCUPANCY-RAIYATS.

*General.*Continuance of
existing occupancy
rights.

14. Every raiyat who, immediately before the commencement of this Act, has, by the operation of any enactment, or by custom or usage or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years. [1885, s. 19 (1).]

Definition of
"settled raiyat."

15. (1) Every person who, for a period of twelve years, [1879, s. 6, para. 1, 2, 3. 1885, s. 20.] whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyat holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for three years thereafter.

(6) If a raiyat recovers possession of land under section 71, or by suit, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than three years.

(7) If, in any suit or proceeding, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter IV.—Occupancy-riayats.—Clauses 16—18.)

Bhuinhars and
Mundari khunt-kattidars to be settled
riayats in certain
cases.

16. The following classes of persons, namely:—

(a) where any land in a village, other than land known as manjhijas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,—all members of any Bhuinhari family holding land in such village, and

[Ben. Act II of
1869.]

(b) where any village contains land not forming part of a Mundari khunt-kattikari tenancy, and an entry of Mundari khunt-kattidari tenancies or of Mundari khunt-kattidars in such village has been made in any record-of-rights as finally published under this Act or under any law in force before the commencement of this Act—all male members of any Mundari khunt-kattidari family holding land in such village,

shall be deemed to be settled raiyats for the purposes of this Act, in regard to the raiyat land which they cultivate in such village; and the provisions of sub-sections (4), (5) and (6) of section 15 shall apply to such persons.

Settled raiyats to
occupancy
have
rights.

17. (1) Every person who is a settled raiyat of a village within the meaning of section 15 or section 16 shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

[1870, s. 8,
para. 1;
1885, s. 21.]

(2) Every person who, being a settled raiyat of a village within the meaning of section 15 or section 16, held land as a raiyat in that village at any time between 1st January, 1907, and the commencement of this Act shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by any Court before the commencement of this Act.

Effect of acquisition
of occupancy-right by
landlord.

18. (1) When the immediate landlord of an occupancy holding is a proprietor or a permanent tenure-holder, and the entire interest of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall not retain a right of occupancy in the holding, but shall hold the same as a proprietor or permanent-tenure-holder, as the case may be; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If an occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and, if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

Illustration.—A, a co-sharer landlord, purchases the occupancy holding of a raiyat X. A is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. A sub-lets the land to Y, who takes it for the purpose of establishing tenants on it; Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z, who takes it for the purpose of cultivating it himself; Z becomes a raiyat in respect of the land.

(3) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, ijaradar or farmer of rents or as a mortgagee in possession shall not, during the period of his lease or mortgage, acquire by purchase or otherwise a right of occupancy in any land comprised in his lease or mortgage:

Provided that nothing in this sub-section shall prohibit the acquisition of occupancy rights by any tenure-holder or farmer of rents who by established custom or usage has a right to acquire the same.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijar or farm.

(4) [Omitted.]

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(Chapter IV.—Occupancy-riayat.—Clauses 19—25.)

*Incidents of occupancy-right.**Rights of occupancy-riayat in respect of use of land.*

19. When a raiyat has a right of occupancy in respect [1885, s. 23.] of any land, he may use the land in any manner which is authorized by local custom or usage and which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

Obligation of occupancy-riayat to pay rent

20. An occupancy-riayat shall pay rent for his holding at a [1879, s. 8, para. 1. 1885, s. 24.] fair and equitable rate.

Protection of occupancy-riayat from eviction except on specified grounds.

21. An occupancy-riayat shall not be ejected by his [1885, s. 25.] landlord from his holding, except in execution of a decree for ejectment passed on the ground—

- (a) that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage and which materially impairs the value of the land or renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition, consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Eviction of occupancy-right on death.

22. If a raiyat dies intestate in respect of a right of [1885, s. 26.] occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property:

Provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

*Enhancement of rent.**Presumption as to fair and equitable rent in case of occupancy-riayat.*

23. The rent for the time being payable by an occupancy- [1879, s. 8, para. 2. 1885, s. 27.] raiyat shall be presumed to be fair and equitable until the contrary is proved.

Confirmation of rents enhanced prior to commencement of this Act.

24. When the rent of an occupancy-riayat whose rent is liable to enhancement has been enhanced before the commencement of this Act, otherwise than by a Deputy Commissioner or Deputy Collector acting under section 24 of the Chota Nagpur Landlord and Tenant Procedure Act, such enhanced rent shall be deemed to be lawfully payable— [1879, s. 21, para. 2. 1885, s. 27.]

- (a) if it has been actually paid continuously for seven years before the commencement of this Act; and
- (b) if it is fair and equitable;

but not otherwise:

Provided that, where the rate of rent lawfully payable by an occupancy-riayat for his holding has been made an issue in any suit for arrears of rent, and the Court has arrived at a finding on that issue, the rate of rent so found shall be lawfully payable by the raiyat for the holding.

Methods in which rent of occupancy-riayat may be enhanced.

25. (1) From and after the commencement of this Act,—

- (a) in any area for which a record-of-rights has not been finally published under this Act or under any Act in force before the commencement of this Act, or for which an order has not been issued under this Act or under any Act in force before the commencement of this Act for the preparation of such a record, the money-rent of an occupancy-riayat whose rent is liable to enhancement may be enhanced only by order of the Deputy Commissioner passed under section 27; and

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(Chapter IV.—Occupancy-riayats.—Clauses 26, 27.)

(b) In any area for which a record-of-rights has been finally published as aforesaid, or for which an order has been issued as aforesaid for the preparation of such a record, the money-rent of an occupancy-riayat whose rent is liable to enhancement shall be enhanced only by order of a Revenue-officer passed under Chapter XII.

(2) No enhancement of such rent made after the commencement of this Act in any manner other than that referred to in clause (a) or clause (b), as the case may be, whether by private contract or otherwise, shall for any reason be recognized or given effect to in any suit or proceeding in any Court.

26. (1) Every application to the Deputy Commissioner for [1879, ss. 22, 23.] the enhancement of the rent of an occupancy holding shall specify:—

(a) such particulars as may be prescribed regarding the area, situation, local names, quality and boundaries of the parcels of land constituting the holding ;

(b) the rates of rent (if any) payable by the raiyat for the different classes of land constituting the holding, and the yearly rent lawfully payable for the holding at the date of the application ;

(c) the rates (if any) generally prevailing in the village for the different classes of land ;

(d) the date (as nearly as it can be ascertained) when the rates of rent generally prevailing were last adjusted in the village ;

(e) the rates which the applicant desires to demand ; and

(f) the grounds on which the applicant considers that he is entitled to the enhancement claimed ;

(2) Sections 142 to 145 shall apply to every application made under this section.

Procedure on receipt of such application.

27. (1) When any such application has been received, the [1879, s. 24.] Deputy Commissioner—

(a) shall forthwith give notice of the contents thereof to the raiyat, and

(b) may, if he thinks fit, order a measurement of the land, and

(c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat, by order, fix such enhanced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable, for such period, not being less than ten nor more than twenty years, as he may think fit :

Provided that no enhancement shall be ordered except [U.P. Act II of 1901, s. 43(1)] on one or more of the following grounds, namely,—

(i) that the rate of the rent paid by the raiyat is below the prevailing rate paid by occupancy-riayats for land of similar quality and with similar advantages ;

(ii) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;

(iii) that the productive powers of the land held by the raiyat have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the raiyat :

Provided also that no enhancement shall be ordered [1868, s. 34.] which is, under the circumstances of the case, unfair or impracticable.

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(Chapter IV.—Occupancy-raiayats.—Clauses 28—31.)

Provided, further, that all enhancements shall be limited in the prescribed manner (if any).

(2) The rent as fixed or varied under sub-section (1) shall be payable by the said raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of a raiyat to claim at any time under section 33 a reduction of the rent previously paid by him.

28. Where the Deputy Commissioner considers that the immediate enforcement of the full enhancement ordered under section 27 is likely to be attended with hardship, he may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the full enhancement has been reached. [1885, s. 26.]

29. The word "enhancement" (with its grammatical variations, as used in sections 24 to 28, shall not include an increase of rent in respect of land held by a raiyat in excess of the area for which rent has previously been paid by him, or in respect of the conversion of upland into korkar; but shall include any commutation of rent payable in money into rent payable wholly or partly in kind.

Increase of Rent in respect of Excess Area.

30. (1) Where land is held by an occupancy-raiayat in excess of the area of which rent has previously been paid by him, no increase shall be made to the rent payable by him, except by order of a Revenue-officer passed under Chapter XII or by order of the Deputy Commissioner passed on an application made to him by the landlord. [1885, s. 52.]

(2) Every such application shall specify—

(a) the yearly rent lawfully payable by the raiyat at the date of the application,

(b) the area and description of the land for which the said rent is payable,

(c) the proceedings (if any) by which the said rent was fixed,

(d) the general rate prevailing in the village for different classes of lands,

(e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village,

(f) the area and description of the land held in excess of the area for which rent has previously been paid, and in respect of which an increase of rent is claimed;

(g) the amount of the said increase,

(h) the manner in which the said increase has been, or should be, assessed, and

(i) any other prescribed particulars.

(3) If a survey and a record-of-rights have been made under this Act, or under any other law in force before the commencement of this Act, in respect of any land referred to in clause (b) or clause (f) of sub-section (2), the "area and description" required by those clauses, respectively, shall be specified by stating the plot number, area and class of each field included in the land, as shown by such survey and record.

(4) Sections 142 to 145 shall apply to every application made under this section.

31. (1) When any such application has been received, the Deputy Commissioner. [1885, s. 52.]

(a) shall forthwith give notice of the contents thereof to the raiyat,

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter IV.—Occupancy-riayats.—Clauses 32—34.)

- (b) shall refer to the entry (if any) relating to the tenancy in the record-of-rights prepared under this Act or any other law for the time being in force,
- (c) may, if he thinks fit, order a measurement of the land held by the raiyat, and
- (d) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat and making such further inquiry as the Deputy Commissioner may think necessary, order such an increase, whether progressive or otherwise, as he may consider to be fair and reasonable:

Provided that an increase of rent shall not be ordered where it would contravene any local custom or usage prohibiting an increase of rent in respect of the increase in area of a holding.

(2) When any increase has been so ordered, it shall be payable from the commencement of the agricultural year following that in which the order is passed, and may be recovered from the raiyat in any suit instituted against him for arrears of rent.

Savings.

32. Nothing in sections 30 and 31 shall prohibit a landlord—

- (a) from settling new lands with a raiyat, in any manner authorized by law, in addition to the area already held by him, or
- (b) from assessing rents on lands converted from upland into korkar in accordance with the general custom or usage prevailing in the village.

Reduction of Rent.

Application to Deputy Commissioner for reduction of rent. 33. (1) Any occupancy-riayat wishing to claim a reduction of the rent previously paid by him may present an application [1879, s. 27.] to the Deputy Commissioner to assess the rent on the land in respect of which such reduction is sought and (if necessary) to measure the land.

(2) Every such application shall specify—

- (a) the yearly rent lawfully payable by the raiyat at the date of the application;
- (b) the area and description of the land for which the said rent is payable;
- (c) the proceedings (if any) by which the said rent was fixed;
- (d) the general rate prevailing in the village for different classes of lands;
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the amount of reduction claimed;
- (g) the grounds on which such reduction is claimed; and
- (h) any other prescribed particulars.

(3) Sections 142 to 145 shall apply to every application made under this section.

Procedure on receipt of such application. 34. (1) When any such application has been received, the Deputy Commissioner— [1879, s. 28.]

- (a) shall forthwith give notice of the contents thereof to the landlord, and
- (b) may, if he thinks fit, order a measurement of the land, and

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter IV.—Occupancy-*raiyat*.—Clauses 34A, 34B.

(c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the landlord, by order, fix such reduced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable, for such period, not being less than ten nor more than twenty years, as he may think fit :

Provided that no reduction shall be ordered except on [1885, s. 38.] one or other of the following grounds, namely,—

- (i) that the soil of the holding has, without the fault of the *raiyat*, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;
- (ii) that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(3) The rent as so fixed or varied shall be payable by the *raiyat* from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(4) Nothing in this section shall bar the right of the landlord to claim at any time an enhancement under section 27 of the rent of such *raiyat*.

34A. The words "reduction" and "reduced rent," as used in sections 33 and 34, shall not include a decrease of rent made on the ground that the land held by a *raiyat* is of less area than the area for which rent has previously been paid by him. [1885, s. 38, and cl. 29 of present Bill.]

Decrease of Rent in respect of Decrease in Area.

34B. (1) Where the land held by an occupancy-*raiyat* is of less area than the area for which rent has previously been paid by him, no decrease shall be made in the rent payable by him, except by order of a Revenue-officer passed under Chapter XII or by order of the Deputy Commissioner passed on an application made to him by the *raiyat*. [1885, s. 32, and cl. 30 of present Bill.]

(2) Every such application shall specify—

- (a) the yearly rent lawfully payable by the *raiyat* at the date of the application,
- (b) the area and description of the land for which the said rent is payable,
- (c) the proceedings (if any) by which the said rent was fixed,
- (d) the general rate prevailing in the village for different classes of lands,
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village,
- (f) the area and description of the land held by the *raiyat* at the time of making the application,
- (g) the amount of the decrease claimed by the *raiyat* in his rent on the ground that the land held by him is of less area than the area for which rent has previously been paid by him,
- (h) the manner in which the said decrease has been, or should be, assessed, and
- (i) any other prescribed particulars.

(3) If a survey and record-of-rights have been made under this Act, or under any other law in force before the commencement of this Act, in respect of any land referred to in clause (i) or clause (f) of sub-section (2), the "area and description" required by those clauses, respectively, shall be specified by stating the plot number, area and class of each field included in the land, as shown by such survey and record.

*The Osho Nagpur Tenancy and Settlement Bill, 1908.**(Chapter IV.—Occupancy-riayats.—Clauses 34C, 35.)*

(4) Sections 142 to 145 shall apply to every application made under this section.

Procedure on receipt
of such application.

34C. (1) When any such application has been received, by the Deputy Commissioner—

[*O. 1885,
S. 2, and cl. 31
of present
Bill.*]

- (a) shall forthwith give notice of the contents thereof to the landlord,
- (b) shall refer to the entry (if any) relating to the tenancy in the record-of-rights prepared under this Act or any other law for the time being in force,
- (c) may, if he thinks fit, order a measurement of the land held by the raiyat, and
- (d) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the landlord and making such further inquiry as the Deputy Commissioner may think necessary, order such a decrease, whether progressive or otherwise, as he may consider to be fair and reasonable:

Provided that a decrease of rent shall not be ordered where it would contravene any local custom or usage prohibiting a decrease of rent in respect of the decrease in area of a holding.

(2) When any decrease has been so ordered, it shall take effect from the commencement of the agricultural year following that in which the order is passed, and may be set off by the raiyat [in any suit instituted against him for arrears of rent.

Commutation of Rent payable in Kind.

Application for
commutation of rent
payable in kind.

35. (1) When any occupancy-riayat pays for a holding [1885 s. 40.] rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in money, then the rent so payable shall not be altered, whether by private contract or otherwise, except on the application of either the raiyat or his landlord to have the rent commuted to a money-rent.

(2) Such application may be made to the Deputy Commissioner or a Revenue-officer.

(3) When any such application is made, the Deputy Commissioner or Revenue-officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the said officer shall have regard to—

- (a) the average money-rent payable by occupancy-riayats for land of a similar description and with similar advantages in the vicinity;
- (b) the average nett value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;
- (c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges; and
- (d) improvements effected by the landlord or the raiyat in respect of the holding.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter IV.—Occupancy-riayats.—Chapter V.—Raiyats having Khunt-katti rights.—Chapter VI.—Non-occupancy Raiyats.—
Clauses 36—40.)

(5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.

(6) When any such order is made by a Deputy Commissioner, it shall be subject to appeal as provided in Chapter XVI.

(7) When any such order is made by a Revenue-officer, an appeal shall lie, in the prescribed manner, to the Commissioner, or to any officer appointed by the Local Government to hear such appeals.

(8) If the application is opposed, the officer shall consider whether, under all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it he shall record in writing the reasons for the refusal.

(9) Nothing contained in this section shall bind or authorize any officer acting hereunder to assess on any holding any amount in excess of a fair and equitable rent.

Period for which
commuted rents are
to remain unaltered.

36. (1) Where the rent of a holding has been commuted under section 35, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be increased for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding or on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual. [1888, s. 40A.]

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 35.

CHAPTER V.

RAIYATS HAVING KHUNT-KATTI RIGHTS.

Incidents of tenancy
of raiyat having
khunt-katti rights.

37. The provisions of this Act relating to occupancy-riayats shall apply also to raiyats having khunt-katti rights:

Provided as follows:—

(a) the rent of a raiyat having khunt-katti rights shall not be enhanced if his tenancy was created more than twenty years before the commencement of this Act; and [1879, s. 19.]

(b) when an order is made for the enhancement of the rent paid by any such raiyat for any land, the enhanced rent fixed by such order shall not exceed one-half of the rent payable by an occupancy-riayat for land of a similar description and with similar advantages in the same village.

CHAPTER VI.

NON-OCCUPANCY RAIYATS.

Initial rent and
lease of non-occup-
ancy-riayat.

38. Subject to any local custom or usage, a non-occupancy raiyat shall, when admitted to the occupation of land, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission, and shall be entitled to a lease only at such rates and on such conditions as may be so agreed on. [1879, s. 9.
1888, s. 42.]

Effect of acquisition
by landlord of the
right of a non-occup-
ancy-riayat in his
holding.

39. The provisions of section 18 shall apply in the case of the right of a non-occupancy-riayat in his holding, in the same way that they apply to an occupancy-right.

Conditions of en-
hancement of rent of
non-occupancy-riayat.

40. The rent of a non-occupancy-riayat shall not be enhanced except by registered agreement or by agreement under section 42. [1888, s. 42.
para. 1.]

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter VI.—Non-occupancy Raiyats.—Clauses 41; 42.)*

Grounds on which non-occupancy raiyat may be ejected.

41. A non-occupancy raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage and which materially impairs the value of the land or renders it unfit for the purposes of the tenancy;
- (c) on the ground that he has broken a condition, consistent with this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (d) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (e) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 42, or that the term for which he is entitled to hold at such a rent has expired.

Conditions of ejectment on ground of refusal to agree to pay a fair and equitable rent.

42. (1) A suit for ejectment on the ground of refusal to agree to pay a fair and equitable rent shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement to pay the rent which he demands and the raiyat has, within six months before the institution of the suit, refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may either—

- (a) file it, in the office of such Court or officer as the Local Government appoints in this behalf, for service on the raiyat, or
- (b) send it to the raiyat direct, either by registered post or by any other means.

(3) When an agreement has been filed, under clause (a) of sub-section (2), in the office of any Court or officer, such Court or officer shall forthwith cause it to be served on the raiyat in the manner provided by section 252 for the service of notices.

(4) When an agreement has been served on a raiyat under sub-section (3), or when it is proved to the satisfaction of the Court that an agreement has been sent to a raiyat by registered post, or, if sent to him by any other means referred to in clause (b) of sub-section (2), has duly reached him, the agreement shall, for the purposes of this section, be deemed to have been tendered.

(5) If a raiyat on whom an agreement has been served under sub-section (3), or to whom an agreement has been sent under sub-section (2) clause (b), executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(6) When an agreement has been executed and filed by a raiyat under sub-section (5), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord.

(7) If the raiyat does not execute the agreement and file it under sub-section (5), he shall be deemed, for the purposes of this section, to have refused to execute it.

(8) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(9) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in section 41, unless he has acquired a right of occupancy.

(10) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter VI.—Non-occupancy Raiyats.—Chapter VII.—Lands exempted from Chapters IV and VI.—Chapter VIII.—Leases and Transfers of Holdings and Tenures.—Clauses 43—47.)

(11) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by non-occupancy raiyats for land of a similar description and with like advantages in the same village and (if the Court thinks fit) in adjoining villages.

Decree for ejectment when to take effect.

43. A decree for ejectment passed under this Chapter [1885, s. 48 (10).] shall take effect from the end of the agricultural year in which it is passed.

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS IV AND VI.

Bar to acquisition of right of occupancy in, and to application of Chapter VI to landlords' privileged lands and certain other lands.

44. Notwithstanding anything contained in Chapter IV, a [1879, s. 6, para 1. 1885, s. 116.] right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to,—

- (a) landlords' privileged lands referred to in sub-clause (a) of section 117, when they are let under a registered lease for a term of years or from year to year, or
- (b) landlords' privileged lands referred to in sub-clause (b) of section 117, or
- (c) land acquired under the Land Acquisition Act, 1894, [1894, s. 1 of] for the Government or any Local Authority or Railway Company, or land belonging to the Government within a cantonment, while such land remains the property of the Government or of any Local Authority or Railway Company.

CHAPTER VIII.

LEASES AND TRANSFERS OF HOLDINGS AND TENURES.

Raiyat entitled to lease.

45. Every raiyat shall be entitled to receive from his landlord a lease containing the following particulars, namely:—

- (a) the quantity and boundaries of the land comprised in his holding; and, where fields have been numbered in a Government survey, the number of each field;
- (b) the amount of yearly rent lawfully payable for such land;
- (c) the instalments in which the rent is to be paid;
- (d) if the rent is payable wholly or partially in kind, the proportion or quantity of produce to be delivered, and the time and manner of delivery; and
- (e) any special conditions of the lease.

Landlord entitled to counterpart engagement.

46. Whenever a landlord grants a lease to a tenant, or [1879, s. 10.] tenders to a tenant a lease such as he is entitled to receive, the landlord shall be entitled to receive from such tenant a counterpart engagement in conformity with the terms of the lease.

Restrictions on transfer of their rights by raiyats.

47. (1) No transfer by a raiyat of his right in his holding [1879, s. 10B.] or any portion thereof,—

- (a) by mortgage or lease, for any period, expressed or implied, which exceeds or might in any possible event exceed five years, or
- (b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a raiyat may enter into a bhugut bandha mortgage of his holding or any portion thereof for any period not exceeding seven years.

(2) No transfer by a raiyat of his right in his holding or any portion thereof shall be binding on the landlord unless it is made with his consent in writing.

(3) No transfer in contravention of sub-section (1) shall be registered, or shall be in any way recognised as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

(4) At any time after the expiration of the period for which a raiyat has, under this section, transferred his right in his holding or any portion thereof, the Deputy Commissioner may, in his discretion, on the application of the raiyat, put the raiyat into possession of such holding or portion.

(5) Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a raiyat's right in his holding or any portion thereof made *bond fide* before the first day of January, 1903.

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter VIII.—Leases and Transfers of Holdings and Tenures.—
Clauses 48—51.)*

48. No decree or order shall be passed by any Court for [1879, s. 10A
Restrictions on sale of raiyats' rights under the sale of the right of a raiyat in his holding, nor shall any (1).] order of Court such right be sold in execution of any decree or order:

Provided as follows:—

- (a) any holding may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the holding;
- (b) any holding may be sold, under the procedure provided by the Public Demands Recovery Act, 1895, for Ben. Act I of 1895. the recovery of a loan granted for the benefit of the holding under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, XIX of 1883, XII of 1884, or otherwise by the Local Government; and
- (c) nothing in this section shall affect the right to execute a decree for sale of a holding passed, or the terms or conditions of any contract registered, before the first day of January, 1908.

Explanation I.—Where a holding is held under joint landlords, and a decree has been passed for the share of the rent due to one or more, but not all, of them, proviso (a) does not authorise the sale of the holding in execution of such decree.

Explanation II.—Proviso (c) does not render valid any document which is otherwise illegal or invalid, or authorise a Court to take judicial cognizance of any such document.

Ben. Act II of 1895.

49. Where any land in a village, other than land known as manjhijas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1868, then—

- (a) sections 47 and 48 shall apply also to all members of any Bhuinhari family holding land in such village, and to the land so held, as if they were raiyats and holdings, respectively, with the substitution of "the first day of January, 1908" for "the first day of January, 1908," and
- (b) if any member of any such family transfers the land [cf. 1885, s. 84.] so held, or any part thereof, by lease, the lessee shall not acquire a right of occupancy therein.

50. (1) Notwithstanding anything contained in sections 47, 48 and 49, any occupancy-raiyat, or any member of a Bhuinhari family who is referred to in section 49, may, without the consent of the landlord, transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose having relation to the good of the holding or tenure, or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose:

Provided that the transfer shall be made by registered deed, and that, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner shall be obtained to the terms of the deed and to the transfer.

(2) Before consenting to any such transfer the Deputy Commissioner shall satisfy himself that the landlord is adequately compensated for the transfer, and, where only part of a holding or tenure is transferred, may, if he thinks fit, apportion between the transferee and the original tenant the rent payable for the holding or tenure.

51. Notwithstanding anything contained in sections 47 and 48, the Deputy Commissioner may, on the application of the landlord of a holding,

1885, s. 84.

and on being satisfied that he is desirous of acquiring the holding or any part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purpose of mining, manufacture or irrigation, or as building ground

Acquisition of holding by landlord for certain purposes.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter **VIII**.—*Leases and Transfers of Holdings and Tenures.*—
 Chapter **IX**.—*General Provisions as to Rent.*—*Clauses 52—55.*)

for any such purpose or for access to land used or required for any such purpose,

and after such inquiry as the Deputy Commissioner may think necessary,

authorise the acquisition thereof by the landlord upon such conditions as the Deputy Commissioner may think fit, and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Deputy Commissioner, including full compensation to the tenant.

Tenant not liable to transfer of land. landlord's interest for rent paid to former landlord, without notice of the transfer.

52. (1) A tenant shall not, when his landlord's interest [1885, s. 72.] is transferred, be liable to the transferee for rent which became due after the transfer and was paid in good faith to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

*Payment of rent.*Instalments.

53. Subject to any registered agreement or established [1885, s. 53.] custom or usage to the contrary, a money-rent payable by a tenant shall be payable in four equal instalments falling due on the last day of each quarter of the agricultural year.

Methods of payment of rent.

54. Payment of rent by a tenant to his landlord in respect [1870, s. 13, para. 1. 1885, s. 54(2).] of the land held or cultivated by the tenant may be made, either—

(a) by tendering the rent at the mal-cutcherry for the receipt of rents or other place where the rent of such land is usually payable, or

(b) by remitting the amount of the rent to the landlord or his agent by postal money-order in the prescribed form and manner.

Receipts for rent and interest thereon.

55. (1) Every tenant who makes a payment on account [1870, s. 12. Cf. 1885, s. 55 to 59.] of rent, or interest due thereon, or both, to his landlord shall be entitled to obtain forthwith from the landlord or his agent a signed receipt for the same, in the prescribed form.

(2) The landlord or his agent shall prepare and retain a counterfoil, in the prescribed form, of the receipt.

(3) If any landlord or his agent, without reasonable cause, fails to grant such a receipt or to prepare and retain such a counterfoil, then, on proof thereof, the Deputy Commissioner may, in a summary proceeding, by order, impose on the landlord a fine which may extend to fifty rupees in respect of each such failure; and may, in his discretion, award to the tenant, by way of compensation, such portion of the fine as the Deputy Commissioner may think fit.

(4) If, in any suit or other proceeding under this Act or any other law, the Court or presiding officer (not being the Deputy Commissioner) finds that any landlord or agent has failed—

(a) to deliver to a tenant a receipt in the prescribed form, or

(b) to prepare and retain a counterfoil in the prescribed form of a receipt delivered to a tenant as aforesaid, such Court or officer shall inform the Deputy Commissioner.

(5) If, in any proceeding instituted under sub-section (3), the Deputy Commissioner discharges any landlord, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Deputy Commissioner may, in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation, not exceeding fifty rupees, as the Deputy Commissioner thinks fit.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter IX.—General Provisions as to Rent.—Clauses 56—58.)

Deposit of rent in
Court of Deputy
Commissioner.

56. (1) In any of the following cases, namely,—

[1879, s. 13.
1885, s. 61(1).]

- (a) when a tenant tenders or remits money on account of rent, and the landlord or his agent refuses to receive it or refuses to grant a receipt for it; or
- (b) when a tenant who is bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord or his agent will not be willing to receive it and to grant him a receipt for it; or
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bond side* doubt as to who is entitled to receive the rent,

the tenant, whether a suit has been instituted against him or not, may, within three months from the date on which such rent become due, deposit to the credit of the landlord the full amount which he considers to be due from him, in the Court of the Deputy Commissioner having jurisdiction to entertain a suit or application for such rent;

and such deposit shall, as far as the tenant and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the tenant of the amount deposited to the credit of the landlord.

(2) When any deposit has been made in the Court of the Deputy Commissioner under this section, it shall be presumed, until the contrary is proved, that the deposit has been lawfully made.

Procedure on re-
ceipt of deposit, and
payment of same.

57. (1) On the written application of the tenant or his agent, [1879, s. 14.
and on his making a declaration in the prescribed form, of. 1885, s. 61.]
the Deputy Commissioner shall receive such deposit and give a receipt for the sum deposited.

(2) The Deputy Commissioner shall, as soon as possible after the receipt of any money so deposited, issue a notice, in the prescribed form, to the landlord to whose credit it has been deposited.

(3) If the landlord, or his agent, appears and applies that the [1885, s. 64(1).]
money in deposit be paid to him, the Deputy Commissioner shall pay the amount to him, if he appears to be entitled to the same, or may, if he thinks fit, retain the amount pending a decision by a Civil Court declaring what person is so entitled.

(4) If no payment is made under sub-section (3) in respect of any deposit before the expiration of three years from the date on which such deposit was made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Deputy Commissioner.

Limitation of suit
or application for
rent due prior to
deposit.

58. Whenever any deposit has been made under section 56, [1879, s. 15.]
no suit shall be maintained, and no application for a certificate under section 242 shall be entertained, against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted or such application be made within six months from the date of the service of the notice issued under section 57 in respect of such deposit.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter IX.—General Provisions as to Rent.—Clauses 59—63.)

Arrears of Rent.

What to be deemed
arrear of rent:
Interest on arrears.

59. Any instalment of rent which is not paid before [1879, s. 30,
sunset on the day when the same is payable shall be deemed 31.
an arrear of rent, and shall be liable to simple interest not 1886, s. 54 (1)
exceeding twelve-and-a-half per centum per annum : (3)

Provided that the interest for the entire year in which any
arrear accrues shall not exceed six-and-a-quarter per centum
on the yearly rent lawfully payable.

Ejection of tenure-
holder and cancella-
tion of lease for
arrears.

60. When an arrear of rent is adjudged to be due from a [1879, s. 32.]
tenure-holder not having a permanent or transferable interest in
the land, the lease of such tenure-holder shall be liable to be
cancelled and the tenure-holder shall be liable to ejection:

Provided that no such cancellation or ejection shall be made
otherwise than in execution of a decree or order made under this
Act.

Arrear of rent to
be first charge on
holding.

61. When a holding is sold for an arrear of rent which has [1879, s. 10A
accrued in respect thereof, the rent shall be a first charge on the (2).]
holding.

Penalties for illegal exaction of rent or prædial conditions.

Penalty on landlord
levying anything in
excess of rent or law-
ful prædial conditions.

62. (1) A landlord who, except under any special enactment [1879, s. 11.]
for the time being in force, levies from a tenant any money in
excess of the rent legally payable, with interest thereon, or
enforces the observance by any tenant of any prædial condition
to which he is not legally entitled, shall, on the application of the
tenant, be liable,

under the order of a Revenue-officer not below the rank of
Deputy Commissioner, or of any officer who may be specially
empowered by the Local Government in this behalf,

to pay as penalty such sum as such officer thinks fit, not
exceeding two hundred rupees, or, when double the amount or
value of what is so levied or enforced exceeds two hundred rupees,
not exceeding double that amount or value.

(2) Such sum shall be awarded to the tenant as compensation.

Damages for ex-
torting payment of
rent or interest by
duress.

63(1). If payment of rent or interest thereon, whether the [1879, s. 17.]
same be legally due or not, is extorted from any tenant by illegal
confinement or other duress, such tenant shall be entitled,
on application to the Deputy Commissioner, to recover such
damages, not exceeding two hundred rupees, as the Deputy
Commissioner may deem a reasonable compensation for the
injury done to him by such extortion.

(2) An award of compensation under sub-section (1) shall not
bar or affect any penalty or punishment to which the person
practising such extortion may be subject by any other law.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter X.—Miscellaneous Provisions as to Landlord and Tenant.—Clauses 64—71.)

CHAPTER X.

MISCELLANEOUS PROVISIONS AS TO LANDLORD AND TENANT.

Korkar.

Cases in which consent of landlord is required for conversion of land into korkar.

64. (1) The oral or written consent of the landlord for the conversion of land into korkar shall be required in every case except—

- (a) where the land was, before such conversion, included in the tenancy of a cultivator who has acquired a right of occupancy in it, or
- (b) where, by the custom or usage of the village, tenure or estate, such consent is not necessary.

(2) In the following cases, namely,

- (i) where any land in a village, other than land known as manjhias or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, and
- (ii) where any land in a village is entered as a Mundari khunt-kattidari tenancy, or any tenant of land in a village is entered as a Mundari khunt-kattidar, in any record of rights finally published under this Act or under any other law in force before the commencement of this Act,

Ben. Act II of 1869.

it shall be presumed, unless and until the contrary is proved, that the said consent is not required,—

in case (i), by a member of a Bhuihari family, or
in case (ii), by a member of a Mundari khunt-kattidari family,
who holds land in such village.

Such consent to be deemed to have been given when ejection not sought.

65. Where the consent of the landlord is required by section 64 for the conversion of land into korkar, such consent shall be deemed to have been given if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejection of the cultivator.

Power to eject cultivator.

66. When any such application is made, the Deputy Commissioner may, after making such inquiry as he thinks fit, and if he is satisfied that the cultivator has no right to convert the land into korkar, order his ejection therefrom.

Prohibition against conversion into korkar of cultivated or homestead land of another person.

67. Nothing in sections 64 and 65 shall authorize any cultivator to convert into korkar any land which is cultivated land or homestead land in the direct possession of any other person.

Right of occupancy in korkar.

68. Every raiyat who cultivates or holds korkar shall have a right of occupancy in such land, notwithstanding that he has not cultivated or held the land for a period of twelve years.

Saving in case of custom or usage as to rent of korkar.

69. When in any village, tenure or estate there is a custom or usage whereby korkar is held—

- (a) during preparation for cultivation, rent-free, or
- (b) during or after preparation, at a rate of rent less than the rate payable for ordinary raiyati land in that village, tenure or estate,

nothing in this Act shall have the effect of destroying or modifying such custom or usage.

Ejection.

Tenant not to be ejected except in execution of decree.

70. No tenant shall be ejected from his tenancy or any portion thereof except in execution of a decree, or in execution of an order of the Deputy Commissioner passed under this Act.

Power to replace in possession tenant unlawfully ejected.

71. If any tenant is ejected from his tenancy or any portion thereof in contravention of section 70, he may, within a period of one year from the date of such ejection, present to the Deputy Commissioner an application praying to be replaced in possession of such tenancy or portion; and the Deputy Commissioner may, if he thinks fit, after making a summary inquiry, replace him in possession.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter X.—Miscellaneous Provisions as to Landlord and Tenant.—Clauses 72—75.)

Relinquishment and Abandonment.

Relinquishment of land by raiyat. 72. (1) Any raiyat may relinquish the land held or cultivated [1879, s. 29] by him, provided he gives written notice of his intention to the [1885, s. 86.] landlord or his agent in or before the month of *Paush* of the year preceding that in which the relinquishment is to have effect.

(2) If a raiyat fails to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land.

(3) If the landlord, or his agent, refuses to receive any notice given under sub-section (1) and to sign a receipt for the same, the raiyat may make an application to the Deputy Commissioner, who shall thereupon cause the notice to be served on such person or his agent, in the manner provided by section 252.

Abandonment of land by raiyat. 73. (1) If a raiyat voluntarily abandons the land held [1885, s. 87(1)] or cultivated by him, without notice to the landlord, and ceases either himself or through any other person to cultivate the land and to pay his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall send a notice to the Deputy Commissioner, in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Deputy Commissioner shall cause a notice of the fact to be published in the prescribed manner.

(3) When a landlord enters under this section, the raiyat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of six years, in the case of an occupancy-raiyat, or, in the case of a non-occupancy raiyat, one year, from the date of the publication of the notice; and thereupon the Deputy Commissioner may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of the possession, on such terms (if any) with respect to compensation to persons injured and payment of arrears of rent as to him may seem just.

Continuance of Occupation.

Effect of lease purporting to admit to occupation after occupation has commenced. 74. When a tenure-holder, village headman or raiyat has [1885, s. 47.] been in occupation of a tenure or holding, and a lease is executed with a view to the continuance of such occupation, he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him to occupation.

Measurements.

Measurement lands. 75. (1) Every landlord of an estate, tenure or Mundari [1879, s. 32.] khunt-kattidari tenancy shall have a right to make a general [1885, s. 91(2).] survey or measurement of the lands comprised in such estate, tenure or tenancy, unless restrained from doing so by express engagement with the occupants of the lands.

(2) If any landlord intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land,

or if any tenant, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses to attend and point out such land,

the landlord may present an application to the Deputy Commissioner.

(3) On receipt of such application the Deputy Commissioner shall, after taking such evidence and making such inquiry as he considers necessary, pass an order either allowing or disallowing the measurement, and, if the case so requires, enjoining or excusing the attendance of any tenant.

The Chota Nappur Tenancy and Settlement Bill, 1908.

(Chapter XI.—Custom and Contract.—Clauses 76—78.)

(4) If any tenant, after the issue of an order enjoining his attendance, refuses or neglects to attend, any map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

CHAPTER XI.

CUSTOM AND CONTRACT.

Saving of custom.

76. Nothing in this Act shall affect any custom, usage [1888, s. 182.] or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

I. A custom or usage whereby a raiyat obtains a right of occupancy as soon as he is admitted to occupation of the tenancy, whether he is a settled raiyat of the village or not, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

II. A custom or usage by which an under-raiyat can obtain rights similar to those of an occupancy-raiyat is, similarly, not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act, and will not be affected by this Act.

III. A custom or usage whereby a raiyat is entitled to make improvements on his tenancy and to receive compensation therefor on ejection is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

Saving as to service tenures and holdings.

77. Nothing in this Act shall affect any incident of a [1888, s. 181.] ghatwali or other service tenure or holding.

Restrictions on exclusion of Act by agreement.

78. (1) Nothing in any contract between a landlord and [1888, s. 178.] a tenant made before or after the commencement of this

Act—

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(2) Nothing in any contract made between a landlord and a tenant since the 1st January, 1907, and before the commencement of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act, shall—

- (i) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;
- (ii) take away or limit the right of an occupancy-raiyat to use land as provided by section 19;
- (iii) take away the right of an occupancy-raiyat to transfer his holding or any portion thereof subject to, and in accordance with, the provisions of this Act;
- (iv) take away the right of a raiyat to apply for a reduction of rent under section 33;
- (v) take away the right of a landlord or tenant to apply for a commutation of rent under section 35;
- (vi) affect the provisions of section 59 relating to interest payable on arrears of rent;
- (vii) take away the right of a raiyat to relinquish his holding in accordance with section 72; or
- (viii) take away the right of a raiyat to bequeath his holding in accordance with established custom or usage.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 79—81.)

CHAPTER XII.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Power to order survey and preparation of record-of-rights. 79. (1) The Local Government may make an order directing that a survey be made and a record-of-rights be prepared, by [1885, s. 102, (1), (3), (4), and Notfn.] a Revenue-officer, in respect of the lands in any local area, estate, or tenure or part thereof.

(2) A notification in the Calcutta Gazette of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights shall be prepared in the prescribed manner.

Particulars to be recorded. 80. Where an order is made under section 79, the [1885, s. 102, and Notfn.] particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, Mundari khunt-kattidar, settled raiyat, occupancy-raiyat, non-occupancy-raiyat, raiyat having khunt-katti rights, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared;
- (g) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (h) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (i) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;
- (k) the special conditions and incidents (if any) of the tenancy;
- (l) any easement attaching to the land for which the record-of-rights is being prepared;
- (m) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority;
- (n) the right of any person, whether a landlord or tenant or not, to take wood, fruit or other jungle produce from jungle-land or waste-land, or to graze cattle on any land, in any village in the area to which the record-of-rights applies;
- (o) the right of any resident of the village to reclaim jungle-land or waste-land, or to convert land into korkar.

Power to order survey and preparation of record-of-rights as or avert disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water. 81. The Local Government may, for the purpose of settling [1885, s. 102, and Notfn.] or avert disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 82—86.)*

Preliminary publication, amendment and final publication of record-of-rights.

82. (1) When a draft record-of-rights has been prepared under this Chapter, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of in the prescribed manner, the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Presumptions as to final publication and correctness of record-of-rights.

83. (1) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate, signed by the Revenue-officer, or by the Deputy Commissioner of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

Settlement of rents.

84. (1) In every area in respect of which a survey is being made and a record-of-rights is being prepared under section 79, the Revenue-officer may, either of his own motion or on the application of the landlord or tenant, settle fair rents in respect of any land held by a tenant.

(2) The said settlement shall be made before the final publication of the record-of-rights:

Provided that the Revenue-officer may, if he sees good reason for so doing, postpone making the settlement until after such publication, either generally or in particular cases.

(3) For the purpose of settling such rents, the Revenue-officer shall have regard to such rules as may be made in this behalf under section 256.

Decision of issues arising during course of settlement of rents.

85. Where, in any proceedings for the settlement of rents under section 84, any of the following issues arises, namely,—

- whether the land is, or is not, liable to the payment of rent;
- whether the land, although entered in the record-of-rights as being held rent free, is liable to the payment of rent;
- whether the relation of landlord and tenant exists;
- whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging; or
- whether the special conditions and incidents of the tenancy, or any easement attaching to the land, have not or has not been recorded, or have or has been wrongly recorded,

the Revenue-officer shall try and decide such issue and settle the rent under section 84 accordingly.

Institution of suits before Revenue-officer.

86. (1) In proceedings under this Chapter, a suit may be instituted before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 82, for the decision of any dispute regarding any entry

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 87—91.)*

which a Revenue-officer has made in, or any omission which he has made from, the record, whether such dispute be—

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estates, or
- (c) between tenant and tenant, or
- (d) as to whether the relationship of landlord and tenant exists, or
- (e) as to whether land held rent-free is properly so held, or
- (f) as to any other matter;

and the Revenue-officer shall hear and decide the dispute.

(2) An appeal shall lie, in the prescribed manner and to [1885, s. 109A] the prescribed officer, from decisions passed under sub- [2.] section (1).

Entry in record-of-
rights of rents set-
tled and decisions
made.

87. A note of all rents settled under section 84, and [1885, s. 107] of all decisions under sub-section (1) and decisions on [2.] 109D.] appeal under sub-section (2) of section 86, shall be made in the record-of-rights as finally published under section 82; and such note shall be considered as part of the record.

Revision by Revenue-
officer.

88. Any Revenue-officer specially empowered by the [1885, s. 108.] Local Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under section 84 or section 85, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed under section 86:

Provided that no such order or decision shall be so revised if a suit or an appeal in respect thereof is pending under section 86, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Correction by
Revenue-officer of
mistakes in record-of-
rights.

89. Any Revenue-officer specially empowered by the Local [1885, s. 108A] and Notfn.] Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 82, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bond fide* mistake:

Provided that no such correction shall be made if a suit or an appeal affecting such entry is pending under section 86, sub-section (2), section 110, clause (8) or clause (10), section 246 or section 247, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Stay of proceedings
before Deputy Com-
missioner or Civil
Court until expiration
of three months after
final publication of
record-of-rights.

90. (1) When an order has been made under section 79, or [1879, s. 28A] under any law in force before the commencement of this Act, [1886, s. 111] and Notfn.] directing the preparation of a record-of-rights, then, notwithstanding anything contained in the foregoing sections of this Chapter, no Deputy Commissioner or Civil Court shall, until three months after the final publication of the record-of-rights, entertain any suit or application—

- (a) in which there is in issue, either directly or indirectly, the existence or non-existence of customary rights to waste-land or jungle-land in any village in the area to which the record-of-rights applies, or

- (b) for the alteration of the rent or the determination of the status of any tenant in such area:

Provided that, if any person considers himself aggrieved by any act of waste or damage committed by any other person in respect of any waste-land or jungle-land during the period within which suits and applications are prohibited by this section, he may apply to the Deputy Commissioner, who may, after such inquiry as he thinks fit, by written order, prohibit the continuance of such waste or damage.

(2) The period during which the institution of a suit or [1885, s. 111A, 111B(4).] the making of an application has been delayed by sub-section (1) shall be excluded in computing the period of limitation provided for such suit or application.

Bar to jurisdiction
of Courts in matters
relating to record-of-
rights.

91. No suit shall be brought in any Court in respect of, any [1885, s. 111A, order directing the preparation of a record-of-rights under this para. 1, and Notfn.] Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it.

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 92—94.)***Stay of applications
and suits in which
certain issues arise.**

92. (1) When a record-of-rights in respect of any land [1885, s. 111 B.
(1), (4).] has been prepared under this Chapter, and finally published, no application or suit affecting any such land or any tenant thereof shall, within three months from the date of the certificate of final publication of such record-of-rights, be made or instituted before the Deputy Commissioner or in any Civil Court for the decision of any of the following issues, namely :—

- (a) whether the land is or is not liable to the payment of rent;
- (b) whether the relation of landlord and tenant exists;
- (c) whether the land is part of a particular estate or tenancy;
- (d) whether there is any special condition or incident of the tenancy, or
- (e) whether any easement attaches to the land.

(2) Where the making of an application or the institution of a suit has been delayed by sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation provided for such suit or application.

**Period for which
rents entered in the
record-of-rights are
to remain unaltered.**

93. (1) When the rent of an occupancy holding is entered [1879, s. 28B.
1885, s. 112.] in a record-of-rights which has been prepared and finally published under this Chapter or any law in force before the commencement of this Act, then, subject to the provisions of sections 86, 88 and 89,

such rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the holding, be enhanced or increased for a period of—

- (a) fifteen years after the final publication of the record-of-rights, when such publication was made after the commencement of this Act, or
- (b) seven years after the final publication of the record-of-rights, when such publication was made before the commencement of this Act;

and no such rent shall be decreased or reduced within the said periods, respectively, save on the ground of alteration in the area of the holding or on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual:

Provided that, in any area in respect of which a record-of-rights has been finally published before the commencement of this Act, a Revenue-officer may, on the application of any landlord, made within two years from the commencement of this Act, assess a fair rent on lands which are included in a holding and are assessable with rent but for which no rent has been paid or has been entered as payable in the record-of-rights.

(2) The periods of fifteen years and seven years mentioned in clauses (a) and (b) of sub-section (1) shall be counted from the date of the final publication of the record-of-rights.

**Expenses of pro-
ceedings under this
Chapter.**

94. (1) When the preparation of a record-of-rights has been [1885, s. 114,
& Note.] directed or undertaken under this Chapter,

the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary-marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct,

shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments (if any), as the Local Government, having regard to all the circumstances, may determine.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 95, 96.)

(2) The cost of preparing copies of Survey maps and extracts from records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

(3) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recoverable in advance in the same manner as if such expenses had been already incurred.

(4) The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Effect of proceedings in certain cases had in Courts pending final publication of record-of-rights.

95. When an order has been made, under section 79 or under any law in force before the commencement of this Act, directing the preparation of a record-of-rights by a Revenue-officer,

then any judgment, decree or order passed by any Court in any suit or proceeding between the making of such first-mentioned order and the final publication of the record-of-rights, and relating to any of the following matters, namely:—

- (a) the existence, non-existence, extent or value of customary rights in waste-land or jungle-land in the area to which the record-of-rights applies, or
- (b) the amount of rent payable in respect of any tenancy therein, or
- (c) the question whether any land which is the subject of dispute is included in the tenancy of a raiyat or is the khas land of the landlord,

may be received in evidence in any inquiry made by such Revenue-officer in the course of preparing such record-of-rights, if such judgment, decree or order relates to matters relevant to such inquiry;

but no such judgment, decree or order shall be conclusive proof of that which it states, either in the Court of such Revenue-officer or in any other Court, Civil, Criminal or Revenue, subsequent to the final publication of the record-of-rights.

Power of Revenue-officer to give effect to agreement or compromise. 1886, s. 10^{2B} under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant: [1886, s. 10^{2B} (1), (3), and Notfn.]

Provided as follows:—

- (a) the Revenue-officer shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act; and
- (b) where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat. This affects the rights of the tenants of B. The Revenue-officer must, under proviso (b), inquire whether B is a tenure-holder or a raiyat, within the meaning of section 5 or section 6. If he finds, on the evidence, that B is a raiyat, he may give effect to the agreement. If he so finds that B is a tenure-holder, he must not give effect to the agreement.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(*Chapter XII.—Record-of-Rights and Settlement of Rents.—Chapter XIII.—Prædial Conditions, and the Commutation and Record thereof.—Clauses 97—102.*)

Date from which settled rent takes effect.

97. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision, finally fixing the rent. [1885, c. 110.]

Revision of record-of-rights, and new settlement of rents, under orders of Local Government.

98. (1) The Local Government may at any time, either of its own motion or on the application of any landlord or tenant, direct that any record-of-rights which has been finally published under this Act or under any law in force before the commencement of this Act, or any portion of any such record-of rights, be revised, in the prescribed manner, but not so as to affect any rent entered therein. [1885, c. 104G, (2) and Notin.]

(2) At any time after the expiration of the period of—

(a) fifteen years from the date of the certificate of the final publication of a record-of-rights, when such publication was made after the commencement of this Act, or

(b) seven years from the date of the certificate of the final publication of a record-of-rights, when such publication was made before the commencement of this Act,

and thereafter at intervals of periods of fifteen years, the Local Government may, of its own motion or on the application of any landlord or tenant, direct—

(i) that such record-of-rights or any portion thereof be revised, in the prescribed manner, in so far as it relates to rents, and

(ii) that a settlement of rents payable by tenants be made under section 84.

(3) The foregoing sections of this Chapter shall, subject to any rules made in this behalf under section 256, apply to every revision and settlement referred to in sub-section (1) or sub-section (2).

Validation of directions given, before the commencement of this Act, for the record of certain rights. 99. Where a direction has been given, in any order made under section 101 of the Bengal Tenancy Act, 1885, before the commencement of this Act, for the record of any rights of the kind mentioned in clause (n) of section 80 of this Act, such direction shall be deemed to be as valid as if the said clause had been enacted before such order was made.

CHAPTER XIII.

PRÆDIAL CONDITIONS, AND THE COMMUTATION AND RECORD THEREOF.

Prohibition against new prædial conditions.

100. (1) From and after the commencement of this Act,—

(a) no tenancy shall be created with any prædial condition attached, other than rent-free tenancies with the sole condition of rendering personal service; and

(b) no new prædial condition shall be imposed on any tenancy in existence at the time of such commencement.

(2) If any landlord creates a tenancy with a prædial condition attached, or imposes a prædial condition on an existing tenancy, in contravention of sub-section (1), he shall not be entitled to enforce the observance of such condition.

Liability of tenant when original conditions of tenancy can not be ascertained.

101. When the original conditions of a tenancy cannot be ascertained, the tenant shall not be liable to any prædial conditions other than or in excess of those to which, by established custom or usage, the general body of the class to which he belongs in the village, tenure or estate in which the lands of the tenancy are situated, is liable:

Provided that, in any case in which prædial conditions have been observed by a tenant for a period of five years continuously, any Revenue-officer acting under this Chapter may, when commuting such conditions under this Chapter, presume that the same are observable in accordance with established custom or usage or in accordance with an express or implied contract made at the commencement of the tenancy.

Method of calculating present value of prædial condition.

102. When, in any proceedings under this Act, it becomes necessary for a Court to calculate the value of any prædial condition, such value shall be taken to be its average value during the ten years immediately prior to the proceedings, or during any shorter period for which evidence may be available.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XIII.—Prædial Conditions, and the Commutation and Record thereof.—Clauses 103—106.)

Procedure in suit to recover value of prædial conditions.

103. When, in any suit for the recovery of rent, it is sought to recover the value of the prædial conditions appurtenant to a tenancy, an issue may be framed as to whether the value of the prædial conditions, when added to the rent payable in respect of the tenancy, exceeds a fair rent; and, if it is found that the resulting amount exceeds a fair rent, the Court shall decree the rent and so much (if any) of the value of the prædial conditions as, together with the rent, will not exceed a fair rent.

Voluntary commutation of prædial conditions.

104. (1) When any land is held subject to any prædial conditions, the tenant or the landlord may apply in writing to a Revenue-officer for commutation of such conditions.

(2) The Revenue-officer shall thereupon cause a notice to be served on the landlord or the tenant, as the case may be, and shall fix a day for considering the application; and on such day, or any day thereafter to which the hearing may be adjourned, shall proceed to inquire into the matter and to determine the amount which, in his judgment, is fairly and equitably payable in commutation of such conditions.

(3) In calculating the said amount, the Revenue-officer shall have regard only to the conditions to which the tenant is liable in accordance with established custom or usage or with any contract made when the tenancy commenced, and to the money value of such conditions at the time of making such calculation, and shall follow the procedure prescribed in section 102:

Provided that the amount payable in commutation shall be so fixed that the total annual rent of the land, including such amount as aforesaid, shall not exceed the rent which would be fair and reasonable if the land were not held subject to any prædial conditions.

Power to order record of prædial conditions, with or without commutation.

105. (1) The Local Government may, in any case in which it is, in its opinion, expedient so to do, make an order directing either—

- (a) that a record of all prædial conditions to which the lands within any local area or any estate, tenure or part thereof are subject shall be prepared, and a commutation of such conditions made, by a Revenue-officer; or
- (b) that a record as aforesaid be made by a Revenue-officer without commutation of such conditions as aforesaid.

(2) A notification in the Calcutta Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(3) The record of prædial conditions shall be prepared in the prescribed manner.

Preparation of record.

106. (1) Whenever an order is made under section 105, the Revenue-officer shall thereupon proceed to prepare a record containing the following particulars, namely:—

- (a) the name of each tenant;
- (b) the name of his landlord;
- (c) the rent payable for the lands held by each tenant at the time the record is being prepared;
- (d) the prædial conditions to which all or any of such lands are subject;
- (e) the amount which, in the judgment of the Revenue-officer, may fairly be deemed payable in commutation of such conditions, and;
- (f) such other particulars as the Board may direct.

(2) In calculating the amount payable in commutation of such conditions, the Revenue-officer shall be guided by the provisions of section 104, sub-section (3).

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XIII.—Pradial Conditions, and the Commutation and Record thereof.—Clauses 107—110.)*

Publication record.

of 107. (1) When the Revenue-officer has prepared a record [1897, s. 7.] under section 106, he shall cause a draft of the same to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of publication.

(2) When objections have been considered and disposed of in the prescribed manner, the record shall be finally framed and published in the prescribed manner.

(3) Separate drafts or records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Appeal from orders of Revenue-officers.

108. (1) An appeal from any order of a Revenue-officer [1897, s. 8.] under this Chapter shall lie to the Deputy Commissioner, or to such officer as the Local Government may appoint in this behalf.

(2) When an appeal has been disposed of under sub-section (1), a further appeal shall lie to the Commissioner.

(3) The provisions of the Code of Civil Procedure relating XIV of 1882 to appeals shall, as nearly as may be, apply to all appeals under sub-section (1) or sub-section (2).

(4) If the Commissioner does not concur with the lower appellate authority, an appeal shall lie to the Board from the order of the Commissioner.

(5) Every appeal under sub-section (1) must be presented within three months, and every appeal under sub-section (2) or sub-section (4) must be presented within one month, from the date of the order appealed against.

Revision by Commissioner or Board.

109. The Commissioner or the Board may direct the [1897, s. 9.] revision of any record prepared under this Chapter, or any portion of such record, at any time within two years from the date of the final publication of the record, but not so as to affect any decision from which an appeal has been preferred under section 108:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Procedure where a survey and record-of-rights are being made.

110. In every local area, estate, tenure or part thereof, in [1897, s. 9A.] which a survey is being made and a record-of-rights is being prepared under this Act or under any law in force before the commencement of this Act,

and in which a record of pradial conditions is being prepared and a commutation thereof is being made under an order issued under section 105,

the following provisions shall have effect, instead of those contained in sections 106 to 109, namely:—

(1) The Revenue-officer shall, at the time of attesting the preliminary record, ascertain all the pradial conditions to which, by established custom or usage or by contract made when the tenancy commenced, each tenant is liable, and the cash values of such conditions; and shall prepare a statement, in such form as the Board may direct, showing the conditions and values so ascertained.

(2) In calculating the cash value of such conditions, the Revenue-officer shall be guided by the provisions of section 104, sub-section (3).

The Oota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XII.—*Prædial Conditions, and the Commutation and Record thereof.*—*Clauses 111—118.*)

- (3) The Revenue-officer shall enter in the *khatiyán* of each tenant the cash value of the prædial conditions (if any) to which such tenant is liable, as ascertained under clause (1).
- (4) If any tenant is liable, by established custom or usage or by contract made when the tenancy commenced, to any prædial conditions other than those to which the general body of tenants are liable, or is not liable to all the prædial conditions to which the general body of tenants are liable, the Revenue-officer shall also specify in the *khatiyán* the prædial conditions to which such tenant is liable.
- (5) The statement prepared under clause (1), and the entries in the *khatiyán*, shall be published in draft in the same manner and for the same period as the record-of-rights.
- (6) Objections as to entries or omissions in the statement or *khatiyán* relating to prædial conditions may be made under the same conditions as objections to entries in or omissions from the record-of-rights, and shall be disposed of in the same manner as such objections.
- (7) After the disposal of objections, the said statement, and the entries in the *khatiyán* relating to prædial conditions, shall be finally published at the same time and in the same manner as the record-of-rights.
- (8) At any time within three months from the date of the certificate of the final publication of the record-of-rights, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry in the record relating to prædial conditions or regarding any omission to enter any such conditions in the record; and the Revenue-officer shall hear and decide the dispute.
- (9) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 256, adopt the procedure laid down in Chapter XVI for the trial of suits.
- (10) An appeal shall lie to the Commissioner from any decision of a Revenue-officer under clause (8), if presented within three months from the date of the decision.

Note of decisions in
record-of-rights.

111. A note of every decision made by the Revenue-officer under clause (8) of section 110, or by the Commissioner under clause (10) of that section, shall be made in the record-of-rights as finally published under section 82, and such note shall be considered as part of the record.

Decision of question
as to whether
a payment in kind is
a prædial condition
or a payment of rent
in kind.

112. Where, in any proceeding under this Chapter or under section 35, a question arises as to whether a payment in kind is a prædial condition or a payment of rent in kind, the Revenue-officer acting under this Chapter, or the officer acting under section 35, as the case may be, shall, after such inquiry as he may consider necessary, decide whether in fact the payment is a prædial condition or not.

Commencement and
affect of commu-
tation.

118. (1) When the commutation of any prædial conditions is settled under this Chapter, for any local area or estate, tenure or part thereof, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

(1897, a. 10.)

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XIII.—*Prædial Conditions, and the Commutation and Record thereof.*—Chapter XIV.—*Record of Landlords' Privileged Lands.*—*Clauses 114—117.*.)

(2) The amount determined by a Revenue-officer under this Chapter to be payable by a tenant in commutation of prædial conditions shall be deemed to be part of the rent payable by the tenant, and shall be recoverable accordingly.

Expenses of voluntary commutation. 114. (1) The Revenue-officer may require any person applying for commutation under section 104 to deposit in advance the whole or any part of the estimated amount of the expenses to be incurred thereunder. [1897, s. 11.]

(2) When in any case the proceedings under section 104 have been completed, the Revenue-officer shall apportion the total expenses thereof between the landlord and tenant in such proportion as, having regard to all the circumstances, he may deem fit; and the amounts so apportioned shall be recoverable as an arrear of land-revenue.

(3) If the amount deposited by any person in pursuance of sub-section (1) exceeds the sum apportioned to him under sub-section (2), the excess shall, when the proceedings have been completed, be refunded to him.

Expenses of record and compulsory commutation. 115. (1) The expenses incurred by the Government in carrying out in any local area or any estate, tenure or part thereof any order made under section 105, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, estate, tenure or part, in such proportions as the Local Government, having regard to all the circumstances, may determine. [1897, s. 12.]

(2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Saving of right to claim reduction or enhancement of rent. 116. No proceedings under this Chapter shall bar the right of any tenant or landlord to claim a reduction or enhancement of rent under this Act after such proceedings have been completed. [1897, s. 12A.]

CHAPTER XIV.

RECORD OF LANDLORDS' PRIVILEGED LANDS.

Definition of “land.” 117. (1) The expression “landlords' privileged lands,” as used in this Chapter, means— [1879, s. 6, para 1. 1885, s. 116, 120 (1) (a).]

(a) lands—

(i) which are cultivated by the proprietor himself with his own stock or by his own servants or by hired labour, or are held by a tenant under a lease for a term of years or from year to year, and which were, by custom, recognised, before the first day of January, 1905, as privileged land in which occupancy-rights could not accrue, and

(ii) which are entered in a record prepared by a Revenue-officer under this Chapter after he has satisfied himself that they rightly fall under sub-clause (i) of this section, and

(b) lands which are entered as manjhihas or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1889. [Ban. Act. II of 1889.]

(2) From such date as the Local Government may, by notification, direct, no lease shall be considered for the purposes of sub-clause (i) of this section unless it be in writing.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XIV.—Record of Landlords' Privileged Lands.—
Chapter XV.—Record of Rights and Obligations of Raiyats having Khunt-katti Rights, Village Headmen, and other classes of Tenants.—Clauses 118—125.)

Power of Local Government to direct a Revenue-officer to make a survey and record of landlords' privileged lands.

Power for Revenue-officer to record landlords' privileged lands on application of landlord or tenant.

Procedure of Revenue-officer.

No land to be recorded as landlords' privileged lands in village containing manjhishas or bethkheta.

Appeal.

Record of rights and obligations of raiyats having khunt-katti rights, village headmen, and other classes of tenants.

Notice of entries to interested persons.

Bills to decide disputes as to entries in, or omissions from, record.

118. The Local Government may, by notification, direct [1886, s. 117.] a Revenue-officer to make a survey and record of all lands in any specified local area which are landlords' privileged lands within the meaning of sub-clause (i) of section 117.

119. When any land is alleged to be a landlord's [1886, s. 118.] privileged land within the meaning of sub-clause (i) of section 117, then, on the application of the landlord or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may ascertain and record whether the land is or is not landlord's privileged land within the meaning of the said sub-clause:

Provided that, when a record of such lands has been or is being made by a Revenue-officer under section 118, no application shall be entertained under this section.

120. In any inquiry as to whether any land is or is not a [1886, s. 120.] landlord's privileged land, a Revenue-officer acting under this [21.] Chapter shall proceed in the prescribed manner, and shall presume that such land is not a landlord's privileged land until the contrary is proved.

121. Where any land in any village is entered as manjhishas or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, a Revenue-officer acting under this Chapter shall not record any other land in that village as being landlords' privileged lands. [1886, s. 120.]
Ben. Act of 1869.

122. An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions and orders of a Revenue-officer under this Chapter.

CHAPTER XV.

RECORD OF RIGHTS AND OBLIGATIONS OF RAIYATS HAVING KHUNT-KATTI RIGHTS, VILLAGE HEADMEN AND OTHER CLASSES OF TENANTS.

123. (1) The Local Government may make an order directing that a record be prepared by a Revenue-officer of the rights and obligations in any specified local area of—

- (a) raiyats having khunt-katti rights;
- (b) village headmen, whether known as pradhans or manjhishas or otherwise; or
- (c) any other class of tenants.

(2) A notification in the Calcutta Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(3) In preparing such record the Revenue-officer shall, as far as practicable, follow the procedure provided for Revenue-officers acting under Chapter XII.

124. At the time of the final publication of a record prepared by a Revenue-officer under this Chapter, that officer shall cause a copy of the entries therein to be served, in the prescribed manner, on all persons interested in such entries, so far as such persons can be ascertained.

125. (1) Where there is a dispute regarding the correctness [C. 1870 ss. 180-181.] of any entry made in a record prepared under this Chapter, or regarding any incorrect omission therefrom, a suit may be instituted, before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record.

(2) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 256, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

(3) An appeal from the decision of the Revenue-officer in such suits shall lie to the Commissioner or to such other officer as the Local Government may appoint, if presented within three months from the date of the decision.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XV.—Record of Rights and Obligations of *Raiyats* having *Khuntkatti Rights*, *Village Headmen*, and other classes of *Tenants*.—Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 126—132.)

Note of final decisions in record.

126. When any suit has been finally decided under section 125, a note of the decision shall be made in the record prepared under section 123, and such note shall be considered as part of the record. ^[C. 1879, s. 162.]

Evidential value of entries.

127. When a record has been finally published under section 123, or amended under section 126, the entries made therein shall be conclusive evidence of the rights and obligations of the tenants to which such entries relate, and of all the particulars recorded in such entries. ^[C. 1879, s. 162.]

Revenue-officer to have regard to origin and nature of tenancy and status of tenant.

128. In making inquiries under this Chapter into the rights and obligations of tenants, the Revenue-officer shall have regard to the origin and nature of each tenancy and to the real status of the tenant, notwithstanding that the tenant may have been described in any document as a *thikadar* or temporary lease-holder or in any other similar terms.

CHAPTER XVI.

JUDICIAL PROCEDURE IN MATTERS COGNIZABLE BY THE DEPUTY COMMISSIONER.

129. [Omitted.]

Place for holding Deputy Commissioner's Court.

130. The Deputy Commissioner may hold a Court, for hearing and determining suits and applications under this Act, in any place within the local limits of his jurisdiction: ^[1879, s. 132.]

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or application, or their agents, shall have had due notice to attend at such place.

Office for instituting suits and making applications.

131. Suits and applications before the Deputy Commissioner under this Act shall respectively be instituted and made— ^[1879, s. 14, para. 1, 2, 3.]

(a) in the revenue office of the district; or

(b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is in charge of a sub-division, then in the office of such Deputy Collector; or

(c) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is not in charge of a sub-division, but is specially empowered by the Local Government to receive such suits or applications, then in the office of such Deputy Collector; or

(d) in the office of the Revenue-officer having jurisdiction to entertain the same.

Withdrawal of suits.

132. The Deputy Commissioner may withdraw any suit from any Deputy Collector or Revenue-officer who is exercising powers of the Deputy Commissioner under this Act, and may try it himself or transfer it to any Deputy Collector. ^[1879, s. 146, para. 4.]

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(*Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 133—138.*)

Jurisdiction where land is situated in more than one district or sub-division.

133. (1) When any suit is instituted or application made [1879, s. 147.] in respect of any land comprised in a tenure or holding, and such land is situated in more than one district or sub-division, the district or sub-division in which the greater part of such land is situated shall be deemed to be the district or sub-division in which the cause of action has arisen;

and, if any question be raised respecting the district or sub-division in which the greater part of the land is situated, the Board or (if the land is situated in one district) the Deputy Commissioner shall decide the question.

(2) Except as provided in sub-section (1), no Deputy Commissioner [1879, s. 148.] shall exercise any jurisdiction under this Act in respect of any land situated beyond the local limits of his jurisdiction, even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

Certain suits and applications cognizable only by the Deputy Commissioner.

134. The following suits and applications shall be cognizable [1879, s. 37.] by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court, except as otherwise provided in this Act, namely:—

- (1) all suits and applications for the determination of the rates of rent payable by any tenant for agricultural land;
- (2) all suits for arrears of rent due on account of—
 - (a) agricultural land, whether subject to the payment of rent or only to the payment of dues which are recoverable as if they were rent, or
 - (b) rights of pasture, forest rights, fisheries or the like;
- (3) all suits under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land;
- (4) all suits and applications to recover the occupancy or possession of any land from which a tenant has been illegally ejected by the landlord or any person claiming under or through the landlord;
- (5) all suits and applications to recover possession of agricultural land from the cultivator thereof on the ground that he has no right to occupy the land and is a trespasser;
- (6) all suits to recover possession of agricultural land, on the ground that the relationship of landlord and tenant has ceased to exist or does not exist, from a person claiming title to the land as a village headman, whether known as a manji or pradhan or otherwise;
- (7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession;
- (8) all suits and applications under this Act which are not mentioned in any of the foregoing clauses.

Reference of suits to arbitration.

135. The Deputy Commissioner may, with the consent of the [1879, s. 38.] parties, refer any suit under this Act to arbitration; and the provisions of sections 506 to 522 (both inclusive) of the Code of Civil Procedure shall, as far as may be practicable, apply to *xlv* of 1892. such references.

Collective suits or applications.

136. Subject to such rules (if any) as may be made in [1879, s. 39.] this behalf under section 256, any number of tenants holding land in the same village may sue or apply or be sued or complained against collectively, in any suit or proceeding before the Deputy Commissioner under this Act, and an allegation that such tenants are wrongly joined shall be no ground for dismissing a suit or refusing to hear an application;

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 137—140.)

but no order shall be passed in any such collective suit or application unless the officer making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it appears to the Deputy Commissioner that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Deputy Commissioner may order a separate trial or hearing.

Order or decree in collective suit or on collective application to specify how far it affects each tenant. 137. Every order or decree passed in any case which is tried or heard jointly under section 136 shall specify the extent to which each of the tenants named in the order or decree shall be affected thereby. [1879, s. 40.]

Suits and applications by or against sarbarkars or tahsildars of estates held khas. 138. All suits or applications before the Deputy Commissioner which, under this Act, may be brought or made by or against landlords or other persons in receipt of the rent of land may be brought or made by or against sarbarkars or tahsildars of estates held under khas management, whether such estates are the property of the Government or of individuals. [1879, s. 41.]

Institution of suits by presentation of statement of claim. 139. Suits before the Deputy Commissioner under this Act shall be instituted by presenting a statement of claim showing—

- (a) the name, description and place of abode of the plaintiff;
- (b) the name, description and place of abode of the defendant, so far as they can be ascertained;
- (c) the substance of the claim, and
- (d) the date of the cause of action.

Additional particulars required in statement of claim in certain suits. 140. (1) In all suits before the Deputy Commissioner for the recovery of an arrear of rent, or for the ejectment of a tenant from any tenure or holding, or for the recovery of occupancy or possession of any tenure or holding, the statement of claim shall contain, in addition to the particulars required by section 139,—

- (a) a specification of the situation and designation of the land held by the tenant, and
- (b) a specification of the extent and boundaries of such land, or (if the plaintiff is unable to specify the extent or boundaries) a description sufficient for the identification of the land.

(2) In all suits referred to in sub-section (1), and in all other suits and all applications before the Deputy Commissioner under this Act relating to the rent of land or to any right or easement arising out of land, [1879, s. 47. 1885, s. 143 (b) & Notfn.]

if a survey has been made and a record-of-rights has been finally published under this Act or under any law in force before the commencement of this Act, in respect of the land to which the suit relates,

the statement of claim shall further contain, and the application shall contain, the following particulars, namely:—

- (i) a list of the survey plots comprised in the tenancy,
- (ii) a statement of the rental of the tenancy according to the record-of-rights, and
- (iii) a copy of all entries in the record-of rights in regard to the subject-matter of the suit or application,

unless the Deputy Commissioner is satisfied, for reasons to be recorded in writing, that it is not necessary that such particulars or any of them should be furnished or that the plaintiff was prevented by any sufficient cause from furnishing such particulars or any of them:

Provided that, in all cases in which the Deputy Commissioner admits a statement of claim or application which does not contain the said particulars, he may direct the supply, without payment of fee, of a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy and the question in dispute in the suit or application.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 141—148.)

(3) Where, since the record-of-rights was prepared and finally published, an alteration has been made in the area of the tenancy, the statement required by clause (ii) of sub-section (2) must also show the rental of the original tenancy according to the record-of-rights, and the statement of claim must further show how the amount of the rent claimed in the suit has been calculated.

141. When any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before the Deputy Commissioner in any suit or proceeding under this Act, and have been admitted in evidence in the suit or proceeding or in any inquiry pending before the Deputy Commissioner, copies of, or extracts from, such documents, certified by a duly authorized Officer of the Court of the Deputy Commissioner to be true copies or extracts, may, with the permission of the Deputy Commissioner, be substituted on the record for the originals, which may then be returned to the landlord;

and thereafter copies or extracts, so certified, may be admitted in evidence in any other suit or proceeding instituted before the same or any other Deputy Commissioner under this Act, unless the Deputy Commissioner before whom they are produced sees fit to require the production of the originals.

142. The statement of claim shall be presented by the plaintiff, or by an agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who is accompanied by a person who has such knowledge.

143. The statement of claim shall be subscribed and verified at the foot, by the plaintiff or his agent, in the following form, or in a form to the like effect:—

“I, A. B., do declare that the above statement is true to the best of my knowledge and belief.”

144. (1) If the plaintiff relies in support of his claim on any document in his possession, he must deliver such document to the Deputy Commissioner at the time of presenting his statement of claim.

(2) Unless such document be delivered or its non-delivery be excused by the Deputy Commissioner, or unless the Deputy Commissioner sees fit to extend the time for delivering the same, it shall not afterwards be admitted.

145. If the plaintiff requires the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver a description of the document to the Deputy Commissioner, in order that the defendant may be directed to produce the document.

146. If the statement of claim does not contain the several particulars required by section 139 or by sections 139 and 140, as the case may be, or is not subscribed and verified as required by section 143, the Deputy Commissioner may return the statement to the plaintiff, or may at his discretion allow it to be amended.

147. If the statement of claim is in proper form, the Deputy Commissioner shall, except in the case provided for in section 150, direct the issue of a summons to the defendant, in the prescribed form.

148. If the plaintiff requires the personal attendance of the defendant, and satisfies the Deputy Commissioner that such personal attendance is necessary, or if the Deputy Commissioner of his own accord requires such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent who has personal knowledge of the subject or is accompanied by a person who has such personal knowledge.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 149—152.*)Day for hearing,
and production of
documents and
witnesses.

149. (1) The day to be specified in the said summons shall [1879, s. 55.] be fixed with reference to the state of the file and the distance at which the defendant is, or is supposed to be, from the place where the Court is held.

(2) The said summons shall order the defendant to produce any document which he has in his possession and of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence; and shall also enjoin the defendant to bring his witnesses with him if they are willing to attend without issue of process.

Issue of warrant for
arrest of defendant.

150. (1) If, in any suit against a tenant for the recovery of an [1879, s. 57.] arrear of rent, or against an agent for the recovery of any money, papers or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

(2) When such application is presented, the Deputy Commissioner shall examine the plaintiff or his agent, according to the law for the time being in force for the examination of witnesses, and shall inspect the documents adduced by him in support of his claim; and, if there be *prima facie* grounds for believing the claim to be well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Deputy Commissioner may issue a warrant, in the prescribed form, for the arrest of the defendant:

Provided that no such warrant shall be issued in a suit for arrears of rent due in respect of a tenure or holding which is liable to sale in execution of any decree which may be passed in the case.

(3) [Omitted.]

(4) The Deputy Commissioner shall fix a reasonable time for the return of the warrant; and the officer entrusted with the service of the warrant shall, at the time of arresting the defendant, deliver to him a notice, in the prescribed form, addressed to the defendant, containing the particulars of the claim, and requiring the defendant, if he contests the claim, to bring with him any document upon which he may intend to rely in support of his defence.

(5) [Omitted.]

Deposit of cost of
serving summons or
warrant.

151. (1) The amount of the cost of serving the summons, or, [1879, s. 55.] if a warrant is issued under section 150, the amount of cost of serving the warrant, shall in all cases be deposited in Court on the day on which the statement of claim is presented to the Deputy Commissioner, or on the next following day.

(2) If the said amount be not so deposited, the case shall not be brought on the file of suits; but in such case the plaintiff may present another statement of claim at any time within the period prescribed by this Act for the limitation of suits.

Procedure on arrest
of defendant.

152. (1) If the defendant is arrested under such warrant, he shall be brought with all convenient speed before the Deputy [1879, ss. 58, 59.] Commissioner; and the Deputy Commissioner shall commit him to the civil jail unless he deposits in Court the money, papers or accounts specified in the notice delivered to him under section 150, sub-section (4), and shall with all convenient speed proceed to try the case in the manner hereinafter provided.

(2) If the suit cannot be at once adjudicated, the Deputy Commissioner may, if he thinks fit,—

(a) direct the defendant to give security for his appearance whenever the same may be required at any time while the suit is pending, and until execution of the final decree which may be passed therein; and

(b) commit the defendant to the civil jail, to be there detained until he furnishes such security or deposits such sum as the Deputy Commissioner may order.

(3) The security referred to in sub-section (2) shall be by bond in the prescribed form.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 153—159.*)

Procedure if defendant cannot be arrested. 153. (1) If the defendant cannot be arrested under the [1879, s. 69.] warrant, the Deputy Commissioner, on the application of the plaintiff, shall either—

- (a) postpone the case, for such period as he may think proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or
- (b) forthwith issue a proclamation, to be affixed at his own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant.

(2) If the defendant appears in pursuance of such proclamation, he shall be dealt with as provided in section 152.

Compensation when arrest of defendant applied for without reasonable cause. 154. If it appears to the Deputy Commissioner that the [1879, s. 61.] arrest of the defendant was applied for without reasonable cause, the Deputy Commissioner may, in his decree, award to the defendant such sum, not exceeding one hundred rupees, as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

Procedure when neither party appears on day of trial. 155. If, on the day fixed by the summons or proclamation [1879, s. 62.] for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be postponed prior to the recording of an issue for trial as provided in section 168, neither of the parties appears in person or by agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the provisions for the limitation of suits contained in this Act.

Procedure when only the defendant appears. 156. If, on such day, only the defendant appears, the [1879, s. 63.] Deputy Commissioner shall pass judgment against the plaintiff by default, unless the defendant admits the cause of action, in which case the Deputy Commissioner shall give judgment for the plaintiff upon such admission, without costs:

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Procedure when only the plaintiff appears. 157. If, on such day, only the plaintiff appears, the [1879, s. 64.] Deputy Commissioner, upon proof that the summons or proclamation has been duly served, shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff and any documentary or oral evidence adduced by him, may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness whom the plaintiff may wish to call, or pass judgment *ex parte* against the defendant.

Hearing of defendant on day to which case is postponed. 158. If the defendant appears on any subsequent day to which the hearing of the suit may be postponed under section 157, the Deputy Commissioner may, upon such conditions (if any) as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Production of witness. 159. The parties shall bring forward their witnesses on the [1879, s. 75.] day of trial; and, if either party requires assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Deputy Commissioner in sufficient time before such day to enable the witness to be summoned to attend on that day; and the Deputy Commissioner shall issue a summons requiring such witness to attend.

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 160—166.)*

Procedure when neither party appears on day fixed for trial of the parties appears, the case shall be struck off under the conditions provided in section 155.

(2) If, on such day, only one of the parties appears, the issue may be tried and determined, in the absence of the other party, upon such proof as may then be before the Court.

Institution or defence of suits by naibs, gumashas, &c., of landlords.

(1) When suits before the Deputy Commissioner under this Act are instituted or defended by naibs, gumashas or other persons employed in the collection of rent or the management of land, in the name and on behalf of the landlords by whom they are so employed,

all the provisions of this Act by which the personal appearance or attendance of parties to a suit is or may be required shall apply to such naibs, gumashas or other persons; and anything which by this Act is required or permitted to be done by a party in person may be done by any such person.

(2) Processes served on any such person shall be as effectual for all purposes in relation to the suit as if they had been served on the landlord in person; and all the provisions of this Act relating to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

Exemption of women from personal attendance.

(1) A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Employment of agents.

(1) Any party to a suit before the Deputy Commissioner under this Act may employ an agent to conduct the case on his behalf; but the appointment of an agent shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or by any order of the Deputy Commissioner.

Power to grant time or adjourn hearing.

(1) The Deputy Commissioner may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to secure the production of further proof, or for other sufficient reason to be recorded by him, adjourn the hearing or further hearing of any case in such manner as he may think fit.

Examination and cross-examination of parties or their agents and of witnesses.

(1) When both parties appear in person on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned under section 164, the Deputy Commissioner shall proceed to examine them, and either party or his agent may cross-examine the other.

(2) If either of the parties is not bound to attend personally, any agent by whom he appears, or any person who accompanies such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

(3) At the time of examination the defendant may, if he thinks fit, file a written statement of his defence.

(4) Such statement shall be verified in the manner prescribed in section 143.

(5) If either of the parties brings forward a witness on the day aforesaid, the Deputy Commissioner may take the evidence of such witness.

Conduct and record of examination.

(1) The examination of the parties or their agents, or of persons accompanying such agents, shall be conducted according to the law for the time being in force for the examination of witnesses.

(2) The depositions of parties, agents and other persons as aforesaid, and of witnesses, shall be recorded in English, or, if the Deputy Commissioner is not sufficiently acquainted with English, then in the vernacular language of the Deputy Commissioner.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—Judicial Procedure in matters cognisable by the Deputy Commissioner—Clauses 167—172.)

Power to direct attendance of party whose agent cannot answer material question. 167. If the agent of either party is unable to answer any material question relating to the case, which the Deputy Commissioner is of opinion that the party whom he represents ought to answer and is likely to be able to answer if interrogated in person, the Deputy Commissioner may postpone the hearing of the case to a future day, and may direct that such party shall attend in person on such day;

and, if such party fails to appear in person on the day appointed, the Deputy Commissioner may pass judgment as in case of default, or make such other order as he may deem proper under the circumstances of the case.

Power to postpone trial to take further evidence. 168. If it appears that the parties are at issue on any question upon which it is necessary to hear further evidence, the Deputy Commissioner shall declare and record the issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Deputy Commissioner.

Production of documents by defendant. 169. If the defendant relies on any document in support of his defence, he shall deliver it into Court at the first hearing of the suit; and, unless such document is so delivered, or its non-production is excused by the Deputy Commissioner, or unless the Deputy Commissioner sees fit to extend the time for producing it, it shall not afterwards be admitted.

Decree when to be made. 170. If, after the examination required by section 165, and after the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can properly be made without taking further evidence, the Deputy Commissioner shall make a decree accordingly.

Judgment. 171. (1) The Deputy Commissioner shall pronounce judgment in open Court.

(2) The judgment shall be written in English, and shall contain the reasons for the decision, and shall be dated and signed by the Deputy Commissioner at the time when it is pronounced:

Provided that any judgment may be written in the vernacular if the Deputy Commissioner is not sufficiently acquainted with English.

Local inquiries. 172. (1) The Deputy Commissioner may, at any stage of a suit or other proceeding before him under this Act,—

(a) cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of the Government with the consent of the authority to whom such officer is subordinate, or by any other person whom the Deputy Commissioner may deem fit; or

(b) himself proceed to the spot and make such local inquiry in person.

(2) The provisions of the law for the time being in force, relating to local inquiries by Commissioners under orders of Civil Courts, shall apply to any local inquiry made under clause (a) of sub-section (1), and, so far as they are applicable, also to inquiries made under clause (b) of that sub-section.

(3) Where the Deputy Commissioner has made a local inquiry in person, he shall, after completing the inquiry, record on the proceedings such observations as appear to him to be appropriate; and the observations so recorded shall be received as evidence in the suit or other proceeding aforesaid.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 175—176.*)

Payment into Court by defendant, after tender to plaintiff.

173. (1) The defendant in any suit before the Deputy Commissioner under this Act may, if he has duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff. [1879, s. 86.]

(2) If, after such payment, the plaintiff elects to proceed in the suit, and ultimately recovers no more than was paid into Court, he shall be charged with all costs of the suit incurred by the defendant; but, if the plaintiff ultimately recovers more than was paid into Court, the defendant shall be charged with all costs of the suit.

Payment into Court by defendant, without prior tender to plaintiff.

174. (1) The defendant in any suit before the Deputy Commissioner under this Act may, without having tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, together with the costs (to be fixed by the Deputy Commissioner, if necessary, as upon a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff. [1879, s. 84.]

(2) If, after such payment, the plaintiff elects to proceed in the suit, and ultimately recovers no more than was paid into Court, he shall be charged with all costs of the suit incurred by the defendant subsequently to such payment; but, if the plaintiff ultimately recovers more than was paid into Court, the defendant shall be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

Prohibition of interest on sums so paid into Court.

175. From the date on which any sum is paid into Court by the defendant under section 173 or section 174, no interest shall be allowed to the plaintiff on such sum, whether it be in full satisfaction of his claim or falls short thereof. [1879, s. 85.]

Power to award damages to plaintiff in rent-suit.

176. (1) In any suit for rent under this Act, if it appears to the Deputy Commissioner that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due from him, [1879, s. 90. Cf. 1885, s. 68.]

and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court of the Deputy Commissioner under section 56 before the institution of the suit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as the Court may think fit, unless interest has been decreed under section 59.

(2) Any damages so awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest, from the date of decree until payment thereof, at such rate *per centum* as the Deputy Commissioner deems reasonable.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 177—179.)

~~Power to award compensation to defendant in rent-suit.~~ 177. In any suit for rent under this Act, if it appears to the [1870, s. 91.] Deputy Commissioner that the plaintiff has instituted the suit against the defendant without reasonable or probable cause,

or that the defendant, before the institution of the suit, duly deposited in the Court of the Deputy Commissioner, under section 56, the full amount which the Deputy Commissioner finds to have been due to the plaintiff at the date of such deposit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the defendant, by way of compensation, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as the Deputy Commissioner may think fit;

and such sum, with interest until payment thereof at such rate *per centum* as the Deputy Commissioner deems reasonable, shall be recoverable from the plaintiff in like manner as other sums decreed to be paid by defendants under this Act.

~~Procedure where third party claims this Act between a landlord and a tenant, the right to receive rent.~~ 178. When, in any suit before a Deputy Commissioner under [1870, s. 87.] this Act between a landlord and a tenant, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the institution of the suit,

such third person shall be made a party to the suit, and the question of the actual payment of the rent to such third person in good faith shall be inquired into, and the suit shall be decided according to the result of such inquiry :

Provided that such decision shall not affect the right of any party, who may have a legal title to the rent of such land or tenure, to establish such title by suit in a Civil Court, if instituted within one year from the date of the decision.

~~Suit for ejectment of non-occupancy-riayat, or cancellation of lease of other tenant, for arrears of rent.~~ 179. (1) Any landlord desiring to eject a non-occupancy- [1870 s. 88.] raiyat on the ground that he has failed to pay an arrear of rent, or to cancel the lease of any tenant on account of the non-payment of arrears of rent, may sue for such ejectment or cancellation and for the recovery of the arrears in the same suit, or may, in a suit for such ejectment or cancellation, adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.

(2) In all cases of suits for the ejectment of a non-occupancy-riayat for non-payment of arrears of rent, or for the cancellation of a lease for non-payment of arrears of rent, the decree shall specify the amount of the arrear; and if such amount, together with interest and costs of suit, be paid into Court within thirty days from the date of the final decree, execution shall be stayed.

(3) The Deputy Commissioner may, for special reasons to be recorded in writing, extend the period of thirty days mentioned in sub-section (2).

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 180—187.)*

Power of Deputy Commissioner to grant lease to raiyat in default of landlord. 180. If a decree is given for the grant of a lease to a raiyat, [1879, s. 92.] and the landlord fails, for a period of three months after the date of the decree, to grant such lease, the Deputy Commissioner may grant a lease, in conformity with the terms of the decree, under his own hand and seal; and such lease shall have the same force and effect as if granted by the landlord.

Procedure where tenant fails to deliver counterpart engagement to landlord. 181. If a decree is given for the delivery of a counterpart [1879, s. 93.] engagement by a tenant to a landlord, and the tenant fails, for a period of three months after the date of the decree, to deliver such counterpart, the decree shall be evidence of the amount of rent claimable from such tenant, and a copy of the decree under the hand and seal of the Deputy Commissioner shall have the same force and effect as a counterpart engagement delivered by the tenant to the landlord.

Execution of Decrees and Orders of the Deputy Commissioner.

Limitation of time for application for execution. 182. No process of execution of any description whatsoever [1879, s. 105.] shall be issued on any decree or order passed by a Deputy Commissioner under this Act, except upon an application made within three years from—

- (a) the date of the decree or order, or
- (b) where there has been an appeal, the date of the final decree or order of the Appellate Court, or
- (c) where there has been a review of judgment, the date of the decision passed on the review.

Issue of warrant of execution. 183. (1) A warrant of execution may be issued against either [1879, s. 99.] the person or the moveable property of a judgment-debtor, but shall not be issued simultaneously against both person and property.

(2) Every warrant of execution against the person or moveable property of a judgment-debtor shall be in the prescribed form.

Indication of moveable property to be seized. 184. (1) Any moveable property required to be seized under [1879, s. 100.] a warrant of execution shall, if practicable, be described in a list to be furnished by the judgment-creditor; but, if the creditor is unable to furnish such list, he may apply for a general seizure of the debtor's effects to the amount of the judgment and costs.

(2) In either case, the property to be seized shall be pointed out by the creditor or his agent to the officer entrusted with the execution of the warrant.

Duration of warrant of execution. 185. Every warrant of execution shall bear the date of the [1879, s. 101.] day on which it is signed by the Deputy Commissioner, and shall continue in force for such period as the Deputy Commissioner may direct, not being more than sixty days from such date.

Second and successive warrants of execution. 186. Second and successive warrants of execution may be [1879, s. 102.] issued, by order of the Deputy Commissioner, on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Notice when to be given before issue of warrant of execution. 187. (1) A warrant of execution shall not be issued upon [1879, s. 103.] any decree or order without previous notice to the party against whom execution is applied for, it, when application for the issue of the warrant is made, a period of more than one year has elapsed from the date of the decree or order, or from the date of the last previous application for execution.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 188—191.*)

(2) A warrant of execution shall not be issued against [1879, s. 104.] the heir or other representative of a deceased party without previous notice to such representative to appear and be heard.

188. If a decree or order is for the payment of arrears of [1879, s. 96.] rent, or for money, or for the delivery of papers or accounts, and if the defendant has been committed to the civil jail under section 152, sub-section (1), or appears pursuant to the conditions of any security-bond given under section 152, the Deputy Commissioner may order that he be detained in, or committed to, the civil jail, there to remain for such time, not exceeding six months, as the Deputy Commissioner may direct, unless in the meantime he pays into Court the amount of the decree, with costs, or otherwise complies with the terms of the decree or order.

189. (1) If a warrant is issued against the person of a judgment-debtor, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Deputy Commissioner.

(2) If the decree in execution of which the judgment-debtor was arrested is a decree for money, and if he does not immediately deposit in Court the full amount specified in the warrant, or make arrangements, satisfactory to the judgment-creditor, for the payment of the same, or satisfy the Deputy Commissioner that he has no present means of paying the same,

the Deputy Commissioner shall send him to the civil jail, there to remain for such time as may be directed by warrant addressed to the keeper of the jail, unless in the meantime he pays the said amount :

Provided that no judgment-debtor shall be imprisoned in execution of a decree under this Act for a longer period than six months or (if the decree is for the payment of a sum of money not exceeding fifty rupees) six weeks ;

(3) If the decree in execution of which the judgment-debtor was arrested is a decree for the delivery of papers or accounts, and if the papers or accounts are not immediately delivered by him to the Deputy Commissioner,

the Deputy Commissioner may commit him to the civil jail, there to remain for such time, not exceeding six months, as the Deputy Commissioner may direct, unless in the meantime he delivers the papers or accounts, according to the terms of the decree.

190. (1) When any judgment-debtor has been discharged [1879, s. 107.] from the civil jail, he shall not be imprisoned a second time under the same decree or order.

(2) If the amount due under such decree or order does not exceed fifty rupees, the Deputy Commissioner may declare such discharged person to be absolved from liability thereunder.

(3) In other cases the discharge shall not extinguish the liability of the discharged person under such decree or order, or exempt property belonging to him from attachment in execution thereof.

191. (1) Any person who applies for a warrant for the arrest of a defendant under section 150, or for a warrant of execution against the person of a judgment-debtor under section 183, shall deposit in Court, at the time of the issue of the warrant, dict-money for thirty days, at such rate as the Deputy Commissioner may direct, for the subsistence of the prisoner.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 192—196.*)

(2) The said person shall also pay diet-money, at the same [1879, s. 109.] rate, before the commencement of each succeeding month of the imprisonment; and, if he fails to make any such payment, the prisoner shall be discharged.

(3) All diet-money spent in providing subsistence for any [1879, s. 110.] prisoner shall be added to the costs in the suit; and any diet-money not so spent shall be returned to the person who paid it.

Execution of decree or order for ejection or re-instatement of cultivator. 192. (1) If the decree or order is for the ejection of any [1879, s. 94.] cultivator from land occupied by him, or for the re-instatement of any cultivator in the occupancy of land from which he has been ejected, the decree or order shall be executed by giving the possession or occupancy of the land to the person entitled by the decree or order to such possession or occupancy.

(2) If any opposition to the execution of the order for giving such possession or occupancy is made by the party against whom the order is made, the Deputy Commissioner shall, in the exercise of his powers as a Magistrate, give effect to the order.

Execution of decree or order for cancellation of lease, or for ejection or re-instatement of tenant not being an actual cultivator. 193. If the decree or order is for the cancellation of any [1879, s. 95.] lease, or the ejection of any tenant (not being an actual cultivator), or for the re-instatement of any tenant (not being an actual cultivator) in the possession of a tenancy from which he has been ejected, the decree or order shall be executed—

(a) by proclaiming its substance to the cultivators or other occupants of the tenancy by beat of drum, or

(b) by notification reciting the substance of the decree or order and affixed in some conspicuous place within, or adjacent to, the tenancy, or

(c) in such other manner as may be prescribed by rule made in this behalf under section 256.

Execution against judgment-debtor's surety. 194. If the judgment-debtor has given security for his [1879, s. 97.] appearance, and is not present when judgment is pronounced, and if his surety fails to deliver him into custody when required so to do, a warrant of execution may be issued against the surety, for the sum due under the bond, in the same manner as if a decree for that sum had been passed against the surety.

Execution of decree for rent given in favour of sharer in undivided estate or tenure. 195. If a decree is given by the Deputy Commissioner under [1879, s. 27.] this Act in favour of a sharer in a joint undivided estate or tenure for money due to him on account of his share of the rent of any tenure comprised in such undivided estate or tenure,

application for the sale of such tenure shall not be received unless execution has first been taken out against any moveable property which the judgment-debtor may possess within the district in which the suit was instituted, and unless the sale of such property (if any) has proved insufficient to satisfy the decree;

and such tenure may then, with the previous sanction of the Commissioner, but not otherwise, be sold, in execution of the decree, in the manner in which any other immoveable property may be sold in execution of a decree for money under the provisions of sections 196 and 209.

Execution against immovable property in certain cases, if judgment not satisfied. 196. In the execution of any decree or order by the Deputy [1879, s. 128.] Commissioner under this Act for the payment of money, not being money due or recoverable as an arrear of rent,

if satisfaction of the decree or order cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted,

the judgment-creditor may apply for execution against any immoveable property belonging to such debtor;

and such immoveable property may, with the sanction of the Commissioner, but not otherwise, be brought to sale in the manner provided in section 209.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XVI.—*Judicial Procedure in matters cognisable by the Deputy Commissioner—Clauses 197—203.*)*Dates in Execution of Decrees of the Deputy Commissioner.*

Notification of intended sale of moveable property, and custody of property. 197. (1) For the purpose of executing a warrant of execution [1879, s. 111.] issued by the Deputy Commissioner under this Chapter against the moveable property of a judgment-debtor, the officer charged with the execution of the warrant shall prepare a list of the property pointed out by the judgment-creditor; and shall publish a proclamation specifying the day upon which the sale is intended to be held, and a copy of the said list, at the intended place of sale and at the residence of the debtor.

(2) A copy of the said list and proclamation shall be transmitted to the Deputy Commissioner, and shall be affixed in his office.

(3) Until the day of sale, the said property shall remain in the custody of the officer executing the warrant.

Interval between seizure and sale. 198. No sale of any moveable property seized in execution [1879, s. 117.] under this Chapter shall be made until the expiration of a period of ten days after the day on which the property was so seized.

Place and manner of sale. 199. (1) Such sale shall be held at the place where the property [1879, s. 112.] is deposited, or at the nearest market or other place of public resort if the officer executing the warrant thinks it is likely to sell there to better advantage.

(2) The property shall be sold by public auction, in one or more lots as the officer executing the warrant may think advisable; and if the judgment-debt, and the costs of the execution and sale, are realised by the sale of a portion of the property, the execution shall immediately be withdrawn with respect to the remainder.

Prohibition of purchase by officers. 200. Officers executing warrants for the sale of property under [1879, s. 116.] this Chapter, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Postponement of sale if fair price not offered. 201. If, on the property being put up for sale, no price which [1879, s. 113.] is offered for it, and the owner of the property, or some person authorized to act on his behalf, applies to have the sale postponed until the next day, or the next market day if a market be held at the place of sale, the sale shall be postponed until such day, and shall then be completed at whatever price may be offered for the property.

Payment of purchase money. 202. (1) The price of every lot shall be paid in ready money [1879, s. 114.] at the time of sale, or as soon thereafter as the officer executing the warrant may think necessary; and, in default of such payment, the property shall again be put up and sold.

(2) When the purchase-money has been paid in full, the officer executing the warrant shall give the purchaser a certificate describing the property purchased by him and stating the price paid.

Application of proceeds of sale. 203. (1) From the proceeds of the sale, the officer executing [1879, s. 115.] the warrant shall make a deduction, at the rate of one anna in the rupee, on account of the costs of the sale, and shall transmit the amount to the Deputy Commissioner in order that it may be credited to the Government.

(2) The said officer shall then pay to the judgment-creditor the expenses incurred by the judgment-creditor in securing the execution of the decree, to such amount as, after examination of the statement of expenses furnished by the judgment-creditor, he thinks proper to allow.

(3) The remainder shall be applied to the discharge of the debt for which the sale was made, with interest thereon up to the day of sale; and, if there be any surplus, it shall be delivered to the person whose property has been sold.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—JUDICIAL PROCEDURE IN MATTERS COGNIZABLE BY THE DEPUTY COMMISSIONER—CLUSTERS 204—207.)

Procedure where third party claims interest in property seized.

204. (1) If, before the day fixed for the sale, a third party [1879, s. 118.] appears before the Deputy Commissioner and claims a right or interest in any of the moveable property seized in execution, the Deputy Commissioner shall examine such party or his agent according to the law for the time being in force relating to the examination of witnesses; and, if he sees sufficient reason for so doing, may stay the sale of such property.

(2) The Deputy Commissioner shall, after taking evidence, [1879, s. 119.] adjudicate upon such claim, and shall make such order thereupon as he thinks fit.

(3) If the claimant fails to establish his right to the property [1879, s. 120.] seized in execution, the Deputy Commissioner may, by his order under sub-section (2), award to the judgment-creditor against the claimant, in addition to the costs of the proceedings, such sum as the Deputy Commissioner may consider sufficient to cover any loss of interest or any other damage which the judgment-creditor has sustained by reason of the postponement of the sale.

(4) The party against whom any order is passed by the [1879, s. 121.] Deputy Commissioner under this section may, at any time within one year from the date of the order, bring a suit in the Civil Court to establish his right:

Provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but for damages against the judgment-creditor by whom the property was brought to sale.

Irregularities not to vitiate sale.

205. No irregularity in publishing or conducting a sale of [1879, s. 122.] moveable property under a warrant of execution issued under this Chapter shall vitiate such sale; but nothing contained in this section shall bar any person who sustains damage by reason of any such irregularity from recovering damages by suit in the Civil Court, if instituted within one year from the date of the sale.

Sale of tenure or holding in execution of decree for arrears of rent.

206. (1) When a decree passed by the Deputy Commissioner [1879, s. 123, para. 1 to 4.] under this Act is for an arrear of rent due in respect of rent of a tenure or holding, the decree-holder may apply for the sale of such tenure or holding, and the tenure or holding may thereupon be brought to sale, in execution of the decree, according to the provisions for the sale of under-tenures contained in the Bengal Rent Recovery (Under-tenures) Act, 1865; and all the provisions of that Act except sections 13 and 14 shall, as far as may be, apply:

Provided that the Commissioner may, by order, in any case in which he may consider it desirable so to do,—

- (a) prohibit the sale of any tenure or portion thereof, or
- (b) stay any such sale for any period specified in the order:

Provided also that any sale of a resumable tenure under this section shall not affect the right of the grantor or his successor in title to resume such tenure, but shall be made subject to such right.

(2) When a warrant of execution has been issued under this Chapter against the person or moveable property of the judgment-debtor, no application shall be received under sub-section (1) while such warrant remains in force.

Sale of other property in execution of decree for arrears of rent of tenure or holding.

207. (1) If, after the sale of a tenure or holding in pursuance of section 206, any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the judgment-debtor.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 208, 209.*)

(2) Notwithstanding anything contained in sub-section (1), a decree-holder may, with the permission of the Deputy Commissioner, granted for reasons to be recorded in writing, proceed against any other property, moveable or immoveable, of the judgment-debtor, without first making application for the sale of the tenure or holding in respect of which the arrear has accrued.

(3) Property referred to in sub-sections (1) and (2) may be [1879, s. 123, para. 5.] brought to sale—

- (a) if moveable, in the manner provided in sections 197 to 203, and
- (b) if immoveable, in the manner provided in section 209.

Procedure where third party claims holding under this Chapter, a third party appears before the Deputy Commissioner and alleges that such third party, and not the person against whom the decree has been obtained, is the holder of such tenure or holding and was in lawful possession of the same at the time when the decree was obtained, [1879, s. 125.]

the Deputy Commissioner shall examine such party according to the law for the time being in force relating to the examination of witnesses; and if he sees sufficient reason for so doing, and if such party deposits in Court or gives security for the amount of the decree, the Deputy Commissioner shall stay the sale, and shall, after taking evidence, adjudicate upon the claim:

Provided that no such adjudication shall be made if the Deputy Commissioner considers that the claim was designedly or unnecessarily delayed:

Provided also that no transfer of a tenure shall be recognised unless it has been registered in the office of the landlord or sufficient cause for non-registration is shown to the satisfaction of the Deputy Commissioner.

(2) The party against whom judgment is given by the Deputy Commissioner under sub-section (1) may, at any time within one year from the date of the judgment, bring a suit in the Civil Court to establish his right. [1879, s. 126.]

Execution against buildings, under-tenures and estates. 209. (1) If the immoveable property against which execution [1879, s. 129.] is applied for under this Chapter is a building, process shall be issued in the same manner as for the seizure and sale of moveable property; and the provisions of sections 197 to 203 shall, so far as may be practicable, be applicable to the execution of such process.

(2) If the property is a saleable tenure, it shall be sold under the provisions of the law for the time being in force in Bengal applicable to the sale of such tenures for demands other than those for arrears of rent due in respect thereof.

(3) If the property is an estate or a share of an estate, it shall be sold under the provisions of the law for the time being in force in Bengal applicable to the sale of estates for the recovery of demands recoverable by the same process as arrears of land-revenue.

(4) If, before the day fixed for the sale of any immoveable [1879, s. 130.] property referred to in this section, objection is offered to the sale on the ground of such property not belonging to the judgment-debtor, the Deputy Commissioner shall examine the party making the objection, according to the law for the time being in force relating to the examination of witnesses; and, if satisfied that there is sufficient ground for so doing, shall stay the sale, and shall, after taking evidence, adjudicate upon the objection.

(5) The party against whom judgment is given by the Deputy Commissioner under sub-section (4) may, at any time within one year from the date of the judgment, bring a suit in the Civil Court to establish his right.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 210—215.)

Application to set aside sale of immovable property, on deposit of debt and compensation to purchaser.

210. (1) When any immovable property has been sold under this Chapter in execution of a decree, any person who owned such property immediately before the sale, or who claims an interest therein under a title lawfully acquired before the sale, may, at any time within a period of thirty days from the date of the sale, apply to have the sale set aside on his depositing in the Court of the Deputy Commissioner,—

- (a) for payment to the purchaser—a sum equal to five per centum of the purchase-money, and
- (b) for payment to the decree-holder—the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation and sale, have been received by the decree-holder:

Provided that, if a person applies under section 211 to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section.

(2) If the said deposits are made within the said period, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside.

Application to set aside sale of immovable property on ground of irregularity.

211. (1) When any immoveable property has been sold under this Chapter in execution of a decree, the decree-holder or the person who owned such property immediately before the sale may apply to the Deputy Commissioner to set aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by reason of such irregularity.

(2) If such application be made, and if the objection be allowed, the Deputy Commissioner shall pass an order setting aside the sale.

Grounds on which suit to set aside sale may be instituted.

212. No suit shall be entertained in any Court to set aside, or to modify the effect of, any sale made under this Chapter, save under section 210 or section 211 or on the ground of fraud or want of jurisdiction.

Appeals.

Appeal from orders of Deputy Commissioners.

213. (1) All orders passed by a Deputy Commissioner under the foregoing provisions of this Act, not being—

- (a) judgments in suits, or
- (b) orders passed in the course of suits and relating to the trial thereof, or
- (c) orders passed after decree and relating to the execution thereof, or
- (d) orders passed under section 204, section 208 or section 211, sub-section (4),

shall be appealable—

- (i) to the Commissioner, or,
- (ii) if passed by a Deputy Collector exercising powers of a Deputy Commissioner—to the Deputy Commissioner.

(2) No judgment of a Deputy Commissioner or Deputy Collector in any suit, and no order of a Deputy Commissioner or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

(3) Orders passed after decree and relating to the execution thereof [except orders passed under section 204, section 208 or section 211, sub-section (4),] shall be appealable to the Court to which an appeal from the decree itself would lie.

Limitation of appeals from such orders.

214. Every appeal under section 217 against an order of a Deputy Commissioner or Deputy Collector shall be presented to the Commissioner or the Deputy Commissioner, as the case may be, within thirty days from the date of the order.

Right to further appeals, with provision for revision by Board or Commissioner.

215. Orders passed in appeal by the Commissioner or Deputy Commissioner shall not be open to any further appeal; but the Board or the Commissioner may call for any case and pass such orders thereon as it or he may think proper.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XVI—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 216—223.*)

Bar to appeal in certain suits. 216. (1) In suits referred to in clause (2) or clause (7) of section 134, tried and decided by a Deputy Commissioner, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final, and not open to revision or appeal except as provided in sub-section (2), unless in any such suit a question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in section 221.

(2) When any such suit in which, if tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Deputy Commissioner.

Appeal to Deputy Commissioner when to be presented. 217. Every petition of appeal to the Deputy Commissioner under section 216, sub-section (2), shall be presented within thirty days from the date of decree appealed against:

Provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the thirty days.

Appeal when to be heard. 218. (1) The Deputy Commissioner or the Commissioner, as the case may be, shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent.

(2) If, on the day fixed for hearing the appeal, or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by agent, the appeal shall be dismissed for default.

(3) If on such day the appellant appears and the respondent does not appear in person or by agent, the appeal shall be heard *ex parte*.

Re-admission appeal. 219. If an appeal is dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Deputy Commissioner or the Commissioner, as the case may be, for the re-admission of the appeal; and, if it is proved to the satisfaction of the Deputy Commissioner or the Commissioner, as the case may be, that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Deputy Commissioner or the Commissioner, as the case may be, may re-admit the appeal.

Judgment in appeal. 220. After hearing the appeal, the Deputy Commissioner or the Commissioner, as the case may be, shall give judgment in the manner provided in section 171 for giving judgment in original suits; and his judgment shall be final.

Appeal to Judicial Commissioner or High Court. 221. (1) In all suits before a Deputy Commissioner under this Act, except—

(a) suits in which, when tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner is declared by section 216, sub-section (1), to be final, and

(b) suits in which, when tried and decided by a Deputy Collector, an appeal is allowed by section 216, sub-section (2), to the Deputy Commissioner,

an appeal from the judgment of the Deputy Commissioner or Deputy Collector shall lie to the Judicial Commissioner, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court.

(2) A second appeal shall lie to the High Court, under Chapter XLII of the Code of Civil Procedure, from any appellate decree passed by the Judicial Commissioner under this Chapter.

Transfer of appeals from Deputy Commissioner to Judicial Commissioner. 222. Where, in analogous cases, some appeals have been presented to the Deputy Commissioner and others to the Judicial Commissioner, the Judicial Commissioner may, on the application of any of the parties, transfer to his own Court the appeals pending in the Court of the Deputy Commissioner.

Limitation of appeal to Judicial Commissioner or High Court. 223. Appeals to the Judicial Commissioner or to the High Court under this Chapter shall be presented within the time prescribed for the presentation of appeals to a District Judge or the High Court, as the case may be, under the Code of Civil Procedure by the law for the time being in force for the limitation of appeals.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVI.—J udicial Procedure in matters cognizable by the Deputy Commissioner.—Chapter XVII.—Limitation.—
Clauses 224—231.)

224. (1) No appeal shall lie from a judgment passed *ex parte* [179, s. 66.] against a defendant who has not appeared, or from a judgment passed against a plaintiff by default for non-appearance.

(2) If the party against whom any such judgment has been given appears, either in person or by agent,—

- (a) if a plaintiff, within thirty days from the date of the Deputy Commissioner's order, and,
- (b) if a defendant, within thirty days after any process for enforcing the judgment has been executed,

or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Deputy Commissioner that there has been a failure of justice, the Deputy Commissioner may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the judgment, according to the justice of the case.

(3) No judgment shall be altered or rescinded under sub-section (2) without previously summoning the opposite party to appear and be heard in support of it.

Order to set aside judgment final, but an order for setting aside a judgment, the order shall be final; rejection of application to set aside but, in all appealable cases in which the Deputy Commissioner rejects an application for setting aside a judgment, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

Application of section 561 of the Code of Civil Procedure shall, so far as applicable, apply to all appeals under [1870, s. 115A.] this Act from decisions of the Deputy Commissioner. [1870, s. 115A.]

CHAPTER XVII.

LIMITATION.

Application of the Indian Limitation Act, 1877. 227. The provisions of the Indian Limitation Act, 1877, shall, so far as they are not inconsistent with this Act, [1885, s. 166.] apply to all suits, appeals and applications under this Act. [XV of 1877.]

General rule of limitation. 228. All suits and applications instituted or made under [1879, s. 42.] this Act, for which no period of limitation is provided elsewhere in this Act, shall be commenced and made, respectively, within one year from the date of the accruing of the cause of action:

Provided that there shall be no period of limitation for applications under section 26, 30, 33, 35, 50, 51, 75, 84, 93 (proviso), 104, 119 or 237.

Limitation of suits and applications for grant of leases, etc. 229. Suits and applications for the delivery of leases or [1879, s. 13.] counterpart engagements, or for the determination of the rates of rent payable for lands held by a tenant, may be instituted and made, respectively, at any time during the tenancy.

Limitation of suits and applications for recovery of arrears of rent. 230. Suits, and applications under section 240, for the recovery of arrears of rent shall be instituted within three years from the end of the agricultural year in which the arrear became due:

Provided that, if any suit or application be for the recovery of rent at a higher rate than was payable in the previous agricultural year, such rent not having been enhanced by the Deputy Commissioner under this Act, it shall be instituted within three months from the end of the agricultural year on account of which such enhanced rent is claimed.

Successive suits or applications for recovery of rent. 231. (1) Where a landlord has instituted a suit against a tenant, or applied for a certificate under section 240 against a Mundari khunt-kattidar, for the recovery of any rent of his tenancy, the landlord shall not institute another suit or apply for another such certificate against him for the recovery of any rent of that tenancy until after six months from the date of the institution or making of the previous suit or application.

(2) Nothing in sub section (1) shall prohibit a fresh suit for rent when a former suit has been withdrawn with leave to sue again, or when a case has been struck off under section 155 or section 160.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(*Chapter XVII.—Limitation.—Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clauses 232—236.*)

Limitation of suits
against agents for
money, accounts or
papers.

232. Suits for the recovery of money in the hands of an [1879, s. 45] agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency, of such agent:

Provided that, if the person having the right to sue has, by fraud, been kept from knowledge of the receipt of any such money by the agent, or if any fraudulent account has been rendered by the agent, the suit may be brought within one year from the time when the fraud first became known to such person; but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

Suits for recovery of
possession of holding

233. Suits for the recovery of possession of a holding, or any portion thereof, from which an occupancy-riayat has been unlawfully ejected must be instituted within six years from the date of such ejection.

Suits or applications
for recovery of posses-
sion of village.

234. Suits or applications for recovery of possession of a village by a village headman, whether known as a pradhan, manjhi or otherwise, against a landlord or any person holding by virtue of any assignment from a landlord, must be instituted or made within six years from the date of dispossession.

CHAPTER XVIII.

SPECIAL PROVISIONS WITH RESPECT TO MUNDARI
KHUNT-KATTIDARS.

Application of
preceding sections
to mundari khunt-
kattidari tenancies.

235. Such of the preceding sections as are applicable to [1879, s. 151] Mundari khunt-kattidars shall, in their application to such persons and their tenancies, be read subject to the provisions of the following sections in this Chapter.

Restrictions on
transfer of Mundari
khunt-kattidari
tenancies.

236. (1) No Mundari khunt-kattidari tenancy or portion [1879, s. 152.] thereof shall be transferable by sale, whether in execution of a decree or order of a Court or otherwise:

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1908, the ^{Ben. Act V} sale may be made with the previous sanction of the Deputy of 1908. Commissioner.

(2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements as he may consider suitable for liquidating the debt.

(3) No mortgage of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years.

(4) No lease of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely:—

(a) mukarari leases of uncultivated land, when granted to a Mundari or a group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation;

(b) leases of uncultivated land, when granted to a Mundari cultivator to enable him to cultivate the land as a riayat;

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clauses 237—239.)

Explanation.—The expression “uncultivated land,” as used in this sub-section, includes land which, though formerly cultivated, is not, at the time the lease is granted, either under cultivation or in the occupation of the lessee for purposes of cultivation.

(5) Where a Mundari khunt-kattidari tenancy is held by a group of Mundari khunt-kattidars, no bhugut bandha mortgage or mukarari lease of the tenancy or any portion thereof shall be valid unless it is made with the consent of all the Mundari khunt-kattidars.

(6) No transfer of a Mundari khunt-kattidari tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-sections, shall be valid; and no such contract or agreement shall be registered.

(7) Nothing in the foregoing sub-sections shall affect any sale or, except as declared in the proviso to sub-section (1), any mortgage, or any lease, made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903.

Ben. Act V
of 1903.

Transfer for certain purposes.

237. (1) Notwithstanding anything contained in section 236, a Mundari khunt-kattidar may, without the consent of his landlord, transfer the land comprised in his tenancy, or any part thereof, for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose:

Provided that the transfer shall be made by registered deed, and that, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner shall be obtained to the terms of the deed and to the transfer.

(2) Before consenting to any such transfer the Deputy Commissioner shall satisfy himself that the landlord is adequately compensated for the transfer, and, where only part of the land comprised in the tenancy is transferred, may, if he thinks fit, apportion between the transferee and the original tenant all dues payable for the tenancy.

(3) An appeal against any order of a Deputy Commissioner consenting or refusing to consent to any such transfer shall lie to the Commissioner, if presented within one month from the date of the order.

Ejection of persons unlawfully obtaining possession of such tenancies.

238. If any person obtains possession of a Mundari khunt-kattidari tenancy or any portion thereof, in contravention of the provisions of section 236, the Deputy Commissioner may eject him therefrom;

and if the tenancy was, before such possession was obtained, entered as a Mundari khunt-kattidari tenancy in a record-of-rights finally published under this Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court in respect of such ejection; but an appeal shall lie to the Commissioner, if presented within three months from the date of the ejection.

Enhancement of rent.

239. (1) The rent of a Mundari khunt-kattidari tenancy may be enhanced only—

(a) by an order of the Deputy Commissioner, and

(b) if it be shown before the Deputy Commissioner that the tenancy was created within a period of twenty years immediately preceding the presentation of the petition for enhancement.

(2) An order of the Deputy Commissioner under sub-section (1) shall not enhance the rent of any such tenancy to an amount which would exceed one-half of the rent which would be payable for the land if it were held by a raiyat having a right of occupancy therein.

(3) The provisions of sections 25 to 27 shall be applicable to proceedings for the enhancement of the rent of a Mundari khunt-kattidari tenancy.

*The Chota Nagpur Tenancy and Settlement Bill, 1908.**(Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clause 240.)*

Recovery of arrears of rent under the certificate procedure, where there is a record-of-rights.

240. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which a record-of-rights has been prepared under this Act or under any law in force before the commencement of this Act,

no suit shall be maintainable in any Court for the recovery of the arrear; but the landlord may apply in writing to the Deputy Commissioner to make a certificate authorising the recovery thereof, with simple interest at six-and-a-quarter or (in the case of money recoverable under the Cess Act, 1880,) twelve-and-a-half per centum per annum, under the Public Demands Recovery Act, 1895.

Ben. Act IX of 1880.
Ben. Act I of 1895.

(2) Upon receiving any such application, the Deputy Commissioner may, after making such inquiry and taking such evidence as he may consider necessary, make a certificate as aforesaid.

(3) The person in whose favour any such certificate is made shall be deemed to be the decree-holder for the amount mentioned in the certificate, and the person against whom the certificate is made shall be deemed to be the judgment-debtor for the said amount; and all proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and on his responsibility, and not otherwise.

(4) Every such certificate shall have the same effect as a certificate made under section 7 of the said Public Demands Recovery Act, 1895; and the following portions of that Act shall be applicable, namely, the proviso to section 7, sub-section (1); section 9, sub-sections (2) and (3); section 10, sub-section (1); and sections 11 to 14, 18, 19, 22 and 24 to 33:

Ben. Act I of 1895.

Provided as follows:—

(a) a certificate made under this section may be enforced only by the attachment and sale of the moveable property of the person against whom the certificate is made, or by the attachment and realisation of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes; and

(b) no objection by any third person to the attachment or sale of crops shall be entertained, except—

(i) an objection, by a mortgagee holding under a bhugut bandha mortgage, that the judgment-debtor has other moveable property or assets from which the sum due can be realised; or

(ii) an objection, by a lessee holding under a mukarrari lease as described in section 236, clause (a), that the land in respect of which the arrear accrued is included in his lease, and that the judgment-debtor has other moveable property or assets from which the sum due can be realised; or

(iii) an objection, by a cultivator, that he is in possession of the land in respect of which the arrear accrued, that the land is recorded in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired such possession, and that the judgment-debtor has other moveable property or assets from which the sum due can be realised; or

(iv) an objection, by such third person, that the land on which such crops were or are standing is entered in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was made.

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(*Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clauses 241—248.*)

(5) The provisions of sections 182 to 205 shall, so far as they may be applicable, apply to proceedings under sub-section (4).

(6) If no appeal is presented under section 32 of the Public Demands Recovery Act, 1895, or if any such appeal is decided ^{Ben. Act I of 1895.} against the judgment-debtor, the certificate shall become absolute, and shall have the same force and effect as a final decree of a Civil Court.

(7) Notwithstanding anything hereinbefore contained, the Deputy Commissioner may, in any case, by written order setting forth the reasons therefor, refuse to make a certificate as aforesaid, or stay for any specified period the execution of any certificate which has been made.

(8) An appeal shall lie to the Commissioner from any order made under sub-section (7), if presented within one month from the date of the order.

Reference of question of title to Civil Court.

241. If, in the course of any proceedings under section 240, [1879, s. 156.] any question of title is raised which could, in the opinion of the Deputy Commissioner, more properly be determined by a Civil Court, the Deputy Commissioner shall refer such question to the principal Civil Court in the district for determination.

Recovery of arrear of rent by suit where there is no record-of-rights.

242. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which no record-of-rights has been prepared, the landlord may institute a suit for the recovery of the arrear. [1879, s. 157.]

(2) A decree or order made in any such suit may be enforced only by the attachment and sale of the moveable property of the defendant, or by the attachment and realisation of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes.

Joinder of parties in proceedings under section 240 or 242.

243. Where a Mundari khunt-kattidari tenancy is held jointly by a group of khunt-kattidars, [1879, s. 158.] and an objection to the making of a certificate under section 240, or to the execution thereof, or to the maintenance of a suit under section 242, is made on the ground that all the khunt-kattidars have not been made parties to the proceedings,

the objection shall not be entertained if it be shown that other khunt-kattidars could not be made parties without undue delay or expense.

Recovery of money due to the Government.

244. Where a decree, or a certificate under the Public Demands Recovery Act, 1895, has been made against a Mundari khunt-kattidari for any money due to the Government, the Deputy Commissioner may attach the land occupied by him and make such arrangements as the Deputy Commissioner may consider suitable for liquidating the debt. [1879, s. 159.]

Entry of Mundari khunt-kattidari tenancies in record-of-rights.

245. All Mundari khunt-kattidari tenancies shall be so described in any record-of-rights prepared under Chapter XII. [1879, s. 159.]

Decision of disputes regarding entries or omissions in record-of-rights.

246. (1) At any time within three months from the date of the certificate of the final publication of the record-of-rights under this Act, or under any law in force before the commencement of this Act, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry of a Mundari khunt-kattidari tenancy or the incidents thereof in the record, or regarding any omission to enter such a tenancy or any incident thereof in the record; and the Revenue-officer shall hear and decide the dispute. [1879, s. 160.]

(2) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 256, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

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(*Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Chapter XIX.—Supplemental Provisions.—Clauses 247—253.*)

Appeal against such decisions. 247. An appeal shall lie to the Commissioner from any [1879, s. 161.] decision of a Revenue-officer under section 246, if presented within three months from the date of the decision.

Entry of decision in record-of-rights. 248. Whenever a suit instituted under section 248 has been [1879, s. 162.] finally decided, a note of the decision shall be made in the record-of-rights, as finally published, by the Revenue-officer referred to in section 246; and such note shall be considered as part of the record.

In preparing record-of-rights, judgments, etc., in suits not to be taken as evidence that tenancies are or are not Mundari khunt-kattidari tenancies. 249. When an order has been issued under section 79 of [1879, s. 163.] this Act, or under section 101 of the Bengal Tenancy Act, 1885, in respect of any local area, estate, tenure or part thereof, VIII of 1885, no judgment, decree or order in any suit instituted thereafter shall be taken as evidence,

in any inquiry made by a Revenue-officer engaged in the preparation of a record-of-rights for such area, estate, tenure or part, under Chapter XII of this Act, or under Chapter X of the said Bengal Tenancy Act, 1885,

respecting any claim that any tenancy within that area, estate, tenure or part is or is not a Mundari khunt-kattidari tenancy.

Record-of-rights to be conclusive evidence on the question whether a tenancy is a Mundari khunt-kattidari tenancy. 250. When a record-of-rights has been finally published [1879, s. 164. Ben. Act V of 1905, s. 2.] under section 82 of this Act, or under sub-section (2) of section 103A of the Bengal Tenancy Act, 1885, or amended under section 248 of this Act,

the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such tenancies and of all particulars recorded in such entries;

and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any Court to show that such tenancy is a Mundari khunt-kattidari tenancy.

CHAPTER XIX.

SUPPLEMENTAL PROVISIONS.

Bar to suits.

Bar to suits in certain cases. 251. Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside any order or decree of any Deputy Commissioner or Revenue-officer in any suit or proceeding under section 27, 31, 34, 35, 42, 50, 55, 62, 63, 66, 73, 75, 86, 90 (proviso) or 93, or under Chapter XIII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of jurisdiction.

Process.

Modes of serving notice or summons. 252. Subject to any rules made in this behalf under [1879, s. 149.] section 256, every notice or summons under this Act required to be served on any person may be served—

- (a) by delivering the same to the person to whom it is directed; or
- (b) on failure of such delivery, by posting the same on some conspicuous part of the house in which the said person usually resides; or by delivering the notice or summons to a general agent of the person to whom such notice or summons is directed, or to any person who has been appointed in that behalf; or
- (c) by sending a registered letter, containing the notice or summons, directed to the said person at his usual place of abode; or
- (d) if no such place of abode can be found, and if the notice or summons cannot be served in any of the modes hereinbefore mentioned, by posting the same at the landlord's office (locally known as *bhandar*) in the village, or at some conspicuous place on the land, to which the notice or summons relates.

Authentication and service of processes issued by the Deputy Commissioner and payment of costs. 253. Every process issued by a Deputy Commissioner under [1879, s. 181.] this Act shall be under the seal and signature of the Deputy Commissioner, and shall be served or executed by the nazir, or, subject to the provisions of section 252 and to any rules therein referred to, in such other manner as the Deputy Commissioner may direct, at the cost of the party at whose instance it is issued.

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XIX.—Supplemental Provisions—Clauses 254—257.)

Production of Witnesses and Documents.

Production of witnesses and documents.

254. For the purposes of any inquiry under this Act, any Deputy Commissioner or Revenue-officer shall have power to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the case of a Court by the Code ^{XIV of 1882.}

Registration of Documents.

Documents not to be registered unless accompanied by copy of entries in record-of-rights.

255. No document relating to land situate in any area—

- (a) for which a record-of-rights has been finally published under section 82 or under any law in force before the commencement of this Act, and
- (b) which is specified in this behalf in a notification issued by the Local Government,

shall be accepted for registration unless it is accompanied by a true copy of all entries in the record-of-rights relating to such land.

Rules and Notifications.

Power to make rules to carry out the objects of this Act.

256. (1) The Local Government may make rules to carry out the objects of this Act. ^[1885, s. 189, & Notfn. 1807, s. 13 (1). (2).]

(2) In particular, and without prejudice to the generality of sub-section (1), the Local Government may make rules—

- (a) to limit the enhancement of the rent of occupancy holdings under section 27;
- (b) to regulate the procedure to be followed by Deputy Commissioners and Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may, by such rules, confer upon any such officer—
 - (i) any power exercised by a Civil Court in the trial of suits;
 - (ii) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; ^{Ben. Act V of 1875.}
 - (iii) power to cut and thresh the crops on any land and weigh the produce with a view to estimating the capabilities of the soil;
- (c) to prescribe the forms to be used, and the mode of service or publication of notices issued, under this Act;
- (d) to prescribe the form and manner in which rent may be remitted by a tenant by postal money order;
- (e) to prescribe the form in which receipts for rent are to be given under this Act, and the form in which counterfoils of such receipts are to be retained; and
- (f) to prescribe the procedure to be followed and the information to be given by any party or applicant in any proceeding under this Act.

Power to make rules as to procedure, and application of the Code of Civil Procedure.

257. (7) The Local Government may, with the previous sanction of the Government of India, make rules for regulating the procedure of the Deputy Commissioner in matters under this Act for which a procedure is not prescribed hereby; and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before the Deputy Commissioner. ^{[Act XV of 1887, s. 88, & 1870, s. 78, 88, 145A (2).] XIV of 1882.}

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(Chapter XIX.—Supplemental Provisions—Clauses 258—264.)

(2) Until rules are made under sub-section (1), and subject to those rules when made and to the provisions of this Act,—

(a) the Code of Civil Procedure shall, so far as it is applicable, apply to all proceedings in the Court of the Deputy Commissioner, whether before or after decree, and

(b) the Judicial Commissioner shall, in respect of those proceedings, be deemed to be the High Court within the meaning of that Code, and shall, subject to the provisions of this Act, exercise, as regards the Courts under his control, all the powers of a High Court under the Code.

Publication of rules in draft.

258. All powers conferred by this Act for making rules are subject to the condition that the rules be made after previous publication.

Publication and effect of rules and notifications.

259. All rules made, and notifications issued, under this Act shall be published in the Calcutta Gazette, and on such publication shall have effect as if enacted in this Act.

[1885, s. 150 & Notfn. 1897, s. 18.]

[1885, s. 189, & Notfn. 1897, s. 15, Cf. Act III of 1906, s. 1 (8).]

Recovery of Dues.

Recovery of dues.

260. All fines, costs, interest, penalties, damages and compensation imposed or awarded under this Act shall be recoverable under the procedure prescribed in Chapter XVI, as if they were sums for which a decree had been passed under that Chapter.

Transfer of cases from one Revenue-officer to another.

261. A Revenue-officer may, at any time, transfer any pending suit, application or proceeding under this Act from the file of any Revenue-officer acting under this Act to the file of any other Revenue-officer so acting who is duly authorised to entertain and decide such suit, application or proceeding.

Control over Deputy Commissioners and Deputy Collectors.

262. In the performance of their duties and the exercise of their powers under this Act, Deputy Commissioners shall be subject to the general direction and control of the Commissioner and the Board, and Deputy Collectors exercising functions of the Deputy Commissioner shall also be subject to the direction and control of the Deputy Commissioner.

Powers of Board exercisable from time to time.

263. Any power conferred by this Act on the Board may be exercised from time to time as occasion requires.

[1897, s. 9A(1), Cf. Reg. Act I of 1899, s. 15.]

Saving of special enactments.

Saving of special enactments.

264. Nothing in this Act shall affect—

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act; or

(b) any other special or local law not repealed, either expressly or by necessary implication, by this Act.

[1885, s. 195 (a), (f) and Notfn.]

The Chota Nagpur Tenancy and Settlement Bill, 1908.

(*Schedules A and B.*)

SCHEDULE A.

ACTS AND NOTIFICATION REPEALED IN THE CHOTA NAGPUR DIVISION, EXCEPT THE DISTRICT OF MANBHUM.

[See section 2(1).]

<i>Acts of the Bengal Council.</i>	
1	2
No. and year.	Short title.
I of 1879 ...	The Chota Nagpur Landlord and Tenant Procedure Act.
IV of 1897 ...	The Chota Nagpur Commutation Act, 1897.
V of 1903 ...	The Chota Nagpur Tenancy (Amendment) Act, 1903.
V of 1905 ...	The Chota Nagpur Tenancy (Amendment) Act, 1905.
VIII of 1879 ...	The Bengal Rent Settlement Act, 1879.

<i>Notification.</i>	
Notification No. 1379L.R., dated the 5th March, 1908, published in the Calcutta Gazette of the 11th idem, Part I, page 631, and in the Gazette of India of the 21st idem, Part I, page 214.	

SCHEDULE B.

ACTS PROSPECTIVELY REPEALED IN THE DISTRICT OF MANBHUM.

[See section 2(2).]

1	2
No. and year.	Short title.
<i>Act of the Governor General of India in Council.</i>	
X of 1859 ...	The Bengal Rent Act, 1859
<i>Acts of the Bengal Council.</i>	
VI of 1862 ...	The Bengal Rent Act, 1862.
IV of 1867 ...	The Bengal Rent (Appeals) Act, 1867.
VIII of 1879 ...	The Bengal Rent Settlement Act, 1879.

I.—Statement showing where sections of the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
1 para. 1 ...	1(1)	
" " 2 ...	1(2)	
" " 3 ...	.....	Repealed by the Repealing and Amending Act, 1903 (1 of 1903).
2—"civil jail" ...	3(v)	
" " "Commissioner" and "Judicial Commissioner."	3(vi)	
" " "Deputy Collector."	3(viii)	
" " "Nazir" ...	3(xv)	
" " "section" ...	.....	Rendered unnecessary by the Bengal General Clauses Act, 1899, (Ben. Act I of 1899), s. 3(39).
" (a) ...	3(ii)	
" (b) ...	3(iv)	
" (c) ...	3(viii)	
" (d) ...	3(x)	
" (e) ...	3(xii)	
" (f) ...	3(xiii)	
" (g) ...	8	
" (h) ...	3(xiv)	
" (j) ...	6	
" (k) ...	3(xxii)	
" (l) ...	3(xxii)	
" (m) ...	3(xxiii)	
" (n) ...	3(xxv)	
" (o) ...	3(xxvi)	
" (p) ...	5	
3, 4 ...	.....	Repealed by the Repealing and Amending Act, 1903 (1 of 1903).
5 ...	45	
6, para. 1 ...	15 (1), 17 (1), 44, 117 (i).	

I.—Statement showing where sections of the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
6, para. 2	...	15(3)
" " 3	...	15(2)
" " 4	...	3(xi), 68
7
8, para. 1	...	20
" " 2	...	23
9	...	38
10	...	46
10A (1)	...	48
" (2)	...	61
10B	...	47
11	...	62
12	...	55(1) to (4)
13, para. 1	...	54(a), 56(1) (a)
" rest	...	56(1)
14	...	57
15	...	58
16
17	...	63
18	...	9
19, para. 1	...	10, 37, proviso (a)
"	...	37, " (b)
20
21	...	25(1)(a)
22	...	25(1)(a), 26(1)
23	...	26
24	...	27(1), (4)
25, 26
		Repealed by the Chota Nagpur Commutation Act, 1897 (Ben. Act IV of 1897), s. 2.
27	..	33
28	...	34
28A	...	90(1)
28B	...	93
29	...	72
30	...	59

L.—Statement showing where sections of the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
31	41, 59	
32	60	
32A	41(b)	
33	75	
34	11	
35	....	Repealed by the Chota Nagpur Tenancy (Amend- ment) Act, 1903 (Ben. Act V of 1903), s. 18.
36	12	
36A	13	
37	134	
38	135	
39	136	
40	137	
41	138	
42	228	
43	229	
44	230	
44A	231(1)	
45	282	
46	189	
47, 48	140	
49	142	
50	143	
51	144	
52	145	
53	146	
54	147, 148	
55	147, 149	
56	151	
57	150	
58	152(1)	
59	152	
60	153	
61	154	
62	155	

I.—Statement showing where sections of the *Chota Nagpur Landlord and Tenant Procedure Act* (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the *Chota Nagpur Tenancy and Settlement Bill*, 1908—continued.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
63	...	156
64	...	157
65	...	158
66	...	224
67	...	225
68	...	165(1) to (4)
69	...	166
70	...	165(5)
71	...	169
72	...	170
73	...	167
74	...	168
75	...	159
76	...	257
77	...	160
78	...	161
79	...	162
80	...	163
81	...	164
82	...	172
83	...	173
84	...	174
85	...	175
86
87	...	178
88	...	179
89	...	171
90	...	176
91	...	177
92	...	180
93	...	181
94	...	{192
95	...	198
96	...	188
97	...	194
98	...	257

I.—Statement showing where sections of the *Chota Nagpur Landlord and Tenant Procedure Act* (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the *Chota Nagpur Tenancy and Settlement Bill*, 1908—continued.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
99	183	
100	184	
101	185	
102	186	
103	187(1)	
104	187(2)	
105	182	
106	189	
107	190	
108	191(1)	
109	191(2)	
110	191(3)	
111	197	
112	199	
113	201	
114	202	
115	203	
116	200	
117	198	
118	204(1)	
119	204(2)	
120	204(3)	
121	204(4)	
122	205	
123, paras. 1 to 4	206	
,, para. 5	207	
124	.....	Repealed by the Chota Nagpur Tenancy (Amend- ment) Act, 1903 (Ben. Act V of 1903), s. 35.
125	208(1)	
126	208(2)	
127	195	
128	196	
129	209(1), (2), (3)	
130	209(4), (5)	
130A	210	
131	253	

I.—Statement showing where sections of the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
132	...	130
133	...	3(viii) (b), (c)
134	...	262
135	...	213
136, para. 1	...	214
" 2	...	215
137	...	216(1)
138
		Repealed by the Chota Nagpur Tenancy (Amendment) Act, 1903 (Ben. Act V of 1903), s. 43.
139	...	216(2)
140	...	217
141	...	218
142	...	219
143	...	220
144	...	221
144A	...	222
145	...	223
145A (1)	...	226
" (2)	...	257
146, paras. 1, 2, 3	...	131
" para. 4	...	132
147	...	133(1)
148	...	133(2)
149	...	252
150
151	...	235
152	...	236
153	...	238
154	...	239
155	...	240
156	...	241
157	...	242
158	...	243
159	...	245
160	...	246
161	...	247

I.—Statement showing where sections of the Chota Nagpur Landlord and Tenant-Procedure Act (Ben. Act I of 1879), as modified up to the 1st March, 1904, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—concluded.

1	2	3
Bengal Act I of 1879.	Bill.	REMARKS.
162	248	
163	249	
164	250	
Schedule A	.....	Repealed by the Repealing and Amending Act, 1903 (I of 1903).
Schedules B to I	.....	Of cl. 256(b) of Bill.

II.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
1, 2	....
3(2)	3(ix)	Extended to Chota Nagpur (except the district of Manbhumi), with the substitution of "Deputy Commissioner" for "Collector" by Notification No. 1379, dated 5th March, 1908.
,, (8)	3(xx)	Extended to Chota Nagpur (except the district of Manbhumi) by Notification No. 1379, dated 5th March, 1908.
,, (9)	3(xxv)	
,, (4)	3(xii)	
,, (5)	3(xxii)	
,, (6)	3 (xvi)	
,, (7)	3(xxvi)	
,, (8)	3(xvii)	
,, (9)	3(x)	
,, (10)	3(xxvii)	
,, (11)	3(i)	
,, (12), (13), (14) ...	....
,, (15)	3(xix)	Extended to Chota Nagpur (except the district of Manbhumi) by Notification No. 1379, dated 5th March, 1908.
,, (16)	3(viii)	
,, (17)	3 (xxiv)	Extended to Chota Nagpur (except the district of Manbhumi) by Notification No. 1379, dated 5th March, 1908.
4	3 (xxi)	
4	4	

II.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
5 (1)	5	
,, (2), (3) & (4)	6	
,, (5)	.....
6 to 13	.....
14	.....	Repealed by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907).
15 to 18C	.....
19 (1)	14	
,, (2)	.....
20	15	
21	17	
22	18	
23	19	
24	20	
25	21	
26	22	
27	23	
28	25	
29 to 34	.....
35	27 (1), second proviso	
36	28	
37	.....
38	34	
39	.....
40	35 (1) to (8)	
40A	36	
41	.....
42	38	
43, para. 1	40	
,, proviso	.....
44	41	
45	.....	Repealed by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907).
46, (1) to (9)	42	
,, (10)	43	
47	74	
48 to 52	.....

II.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
53	53	
54(1), (3)	59	
,, (2)	54	
55 to 60	.....
61 (1)	56	
,, (2)	.....
62, 63	.....
64 (1)	57(3)	
,, (2)	.....
65, 66	.....
67	59	
68 to 71	.....
72	52	
73 to 83	.....
84	51	
85, 86	.....
87 (1), (2), (3)	73	
,, (4)	.....
88	.....
89	70	
90	.....
91 (1)	.....
,, (2)	75(4)	
92 to 100	.....
101 (1)	79(1)	Extended to Chota Nagpur (except the district of Manbhumi), with the omission of certain words, by Notification No. 1379, dated 5th March, 1908.
101 (2)	.....
,, (3)	79(2)	Extended to Chota Nagpur (except the district of Manbhumi) by Notification No. 1379, dated 5th March, 1908.
,, (4)	79(3)	Ditto.

II.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
102	80	Extended to Chota Nagpur (except the district of Manbhum), with modifications, by Notification No. 1379, dated 5th March, 1908.
102A	81	Extended to Chota Nagpur (except the district of Manbhum) by Notification No. 1379, dated 5th March, 1908.
103	.....
103A	82	Extended (except certain words) to Chota Nagpur (except the district of Manbhum) by Notification No. 1379, dated 5th March, 1908.
103B	83	Extended to Chota Nagpur (except the district of Manbhum), with the substitution of Deputy Commissioner for "Collector", by Notification No. 1379, dated 5th March, 1908.
104	84	
104A to 104C	.....
104D	84	
104E, 104F	.....
104G (1)	.....
," (2)	98	Extended to Chota Nagpur (except the district of Manbhum), with modifications, by Notification No. 1379, dated 5th March, 1908.
," " proviso ...	...	Extended to Chota Nagpur (except the district of Manbhum) by Notification No. 1379, dated 5th March, 1908.

II.—Statement showing where sections of the *Bengal Tenancy Act, 1885* (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the *Chota Nagpur Tenancy and Settlement Bill, 1908*—continued.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
104H, 104J, 105 ...	.....
105A, para. 1 ...	85	
„ proviso ...	.....
106, para. 1 ...	86(1)	
„ proviso ...	.....
107 (1) ...	.....
„ (2) ...	87	
108 ...	88	
108A ...	89	Extended to Chota Nagpur (except the district of Manbhumi), with modifications, by Notification No. 1379, dated 5th March, 1908.
109 ...	.....
109A (1) ...	.....
„ (2) ...	86(2)	
„ (3) ...	.....
109B (1) ...	96, and prov. (a)	Extended to Chota Nagpur (except the district of Manbhumi), with a modification, by Notification No. 1379, dated 5th March, 1908.
„ (2) ...	.....
„ (3) ...	96 prov.(b)	Extended to Chota Nagpur (except the district of Manbhumi), by Notification No. 1379, dated 5th March, 1908.
„ III. ...	96, III.	Ditto.
109C ...	.....
109D ...	87	
110, first part ...	97	
„ rest ...	.....
111 ...	90(1)	Extended (except certain words) to Chota Nagpur (except the district of Manbhumi), by Notification No. 1379, dated 5th March, 1908.

II.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885,) as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
111A, para. 1 ...	91	Extended (except certain words) to Chota Nagpur (except the district of Manbhum) by Notification No. 1379, dated 5th March, 1908. Ditto.
„ proviso	.....
111B (1) ...	92(1)	
„ (2) ...	.....
111B (3) ...	.....
„ (4) ...	90(2), 92(2)	
112 ...	.....
113 ...	93	
114 ...	94	Extended (except certain words) to Chota Nagpur (except the district of Manbhum) by Notification No. 1379, dated 5th March, 1908.
115, 115A ...	.....
116 ...	44, 117	
117 ...	118	
118 ...	119	
119 ...	.....
120 (1) ...	117	
„ (2) ...	120	
„ (2a), (3) ...	.....
121 to 147B ...	.....
148, opening words and clause (b).	140(1)	Extended to Chota Nagpur (except the district of Manbhum), with a modification by Notification No. 1379, dated 5th March, 1908.
„ (a) ...	.....
„ (b) ...	140(2)	Extended to Chota Nagpur (except the district of Manbhum), with a modification, by Notification No. 1379, dated 5th March, 1908.

II.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—continued.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
148(62)	...	140(3)
		Extended to Chota Nagpur (except the district of Manbhumi) by Notification No. 1379, dated 5th March, 1908.
„ (c) to (f)	
„ (g)	...	141
„ (g), (h)
148A to 177
178(1) (a), (b), (c)	...	78(1)
„ „ (d)
„ (2)	...	78(2)
„ (3)	...	78(3)
„ proviso
„ Expln.
179; 180
181, first part	...	77
„ second part
182
183	...	76
„ Ill. (1)
„ „ (2)	...	76, Ill. II
184
185	...	227
186 to 188A
189, opening words and clauses (1) and (2).	256(2)(a), (b), 259	Extended to Chota Nagpur (except the district of Manbhumi), with modifications in clause (2), by Notification No. 1379, dated 5th March, 1908.
„ (3), (4)
190	...	258
		Extended (except certain words) to Chota Nagpur (except the district of Manbhumi) by Notification No. 1379, dated 5th March, 1908.
191 to 194

I.—Statement showing where sections of the Bengal Tenancy Act, 1885 (VIII of 1885), as modified up to the 31st May, 1907, are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908—concluded.

1	2	3
Act VIII of 1885.	Bill.	REMARKS.
195 (a) ...	264 (a)	Extended to Chota Nagpur (except the district of Manbhumi), by Notification No. 1379, dated 5th March, 1908.
,, (b) to (e) ...	.....
,, (f) ...	264 (c)	Extended to Chota Nagpur (except the district of Manbhumi), by Notification No. 1379, dated 5th March, 1908.
196 ...	.....
Schedules ...	.....

III.—Statement showing where sections of the Chota Nagpur Commutation Act, 1897 (Ben. Act IV of 1897), are reproduced in the Chota Nagpur Tenancy and Settlement Bill, 1908.

1	2.	3
Bengal Act IV of 1897.	Bill.	REMARKS.
1 (1)	...	1 (1)
„ (2)	...	„ (2)
„ (3)
2
		Repealed by the Repealing and Amending Act, 1903 (I of 1903).
3 (1) (a)	...	3 (xxiv) ...
„ „ (b), (c)	...	3 (xxv) ...
„ „ (d)	...	3 (i)
„ (2)	3 (2)
4	...	104
5	...	105
6	...	106
7	...	107
8	...	108
9	...	109
9A	...	110, 263
10 (1)	100 (b), 113 (1)
„ (2)	113(2)
11	...	114
12	...	115
12A	...	116
13 (1), (2)	...	256 (a), (b), 259
„ (3) to (6)
14	...	258

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are—

- (1) to consolidate, simplify and re-arrange the greater part of the statute law relating to landlord and tenant in Chota Nagpur;
- (2) to secure raiyats in Chota Nagpur in the enjoyment of their existing rights, both statutory and customary, to ameliorate their condition, and to ensure in cases of necessity their protection against oppressive landlords;
- (3) to safeguard the interests of landlords in their khas privileged lands, and their interests in certain other directions, and to protect them against fraudulent complaints made by raiyats, and
- (4) to remove, as far as possible, ambiguities, defects and anomalies which are known to exist in the present law.

2. The existing statute law relating to landlord and tenant in Chota Nagpur (except the district of Manbhum) is to be found mainly in the following Acts of the Bengal Council:—

Bengal Act I of 1879,
Bengal Act IV of 1897,

Bengal Act V of 1903, and
Bengal Act V of 1905,

and in certain provisions of Act VIII of 1885 (the Bengal Tenancy Act, 1885) which were extended to Chota Nagpur (except the district of Manbhum) by Notification No. 1379L.R., dated the 5th March 1908, *e.g.*, sections 3(1), (2), (15), (17), 101(1), (3), (4), 102, 102A, 103A, 103B, 104G(2), 108A, 109B(1), (3), 111, 111A, 114, 148 (b), (61), (62), 189(1), (2), 190 and 195 (a), (f).

3. In 1906 certain proposals to amend Bengal Act I of 1879 were made, and an amending Bill was drafted, circulated for consideration, and introduced in the Bengal Council, and was referred to a Select Committee of the Council in February, 1907. The opportunity has now been taken of incorporating the clauses of that Bill (subject to certain modifications and additions) with the sections of the Acts at present in force, and of re-arranging the law relating to landlord and tenant in the manner adopted in the Bengal Tenancy Act, 1885. It is hoped that the new arrangement of the sections and the division of the Act into Chapters dealing with separate subjects will render the law more readily intelligible and easy of reference.

4. The important principles of the Bill in regard to its second object, namely, the improvement of the position of raiyats in Chota Nagpur, are the following:—

(1) The principle of the settled raiyat, which has been accepted in the rest of Bengal since 1885, is recognized in Chota Nagpur (clause 15). No objections of any kind have been made to this proposal, and no reason exists why raiyats in Chota Nagpur should be placed in a less advantageous position in this respect than raiyats in the rest of Bengal. At the same time, where by custom or usage raiyats in Chota Nagpur have rights superior to those conferred by the Bengal Tenancy Act, 1885, these have been safeguarded.

(2) All enhancements of rents of occupancy-raiyats by private contract in future have been distinctly prohibited [clause 25(2)]. Section 21 of Bengal Act I of 1879 provides for this to some extent already, but opinions have not been unanimous as to the proper interpretation of that section, and moreover, in practice, private enhancements have been frequent, and in many cases excessive, and hence the question has been dealt with fully in the present Bill (clauses 25 to 28). The Bill (clause 24) legalises existing enhancements where the enhanced rents have been paid continuously for a period of seven years; and for enhancements in future provides that rents shall only be enhanced, in areas where a record-of-rights has not been prepared, by order of the Deputy Commissioner; and, in areas where a record-of-rights has been published, by periodical revisions of that record by Settlement-officers. A record-of-rights is being prepared for the whole Division, and it is therefore hoped that, in the course of a few years, rents of occupancy-raiyats will only be liable to enhancement at periodical revisions of Settlement all over the Division. In preparing records-of-rights after the commencement of this Bill, Settlement-officers have also been given the power of settling fair rents (clause 84), and, when once fair rents have been settled and a record prepared, no revision of the same is allowed for a period of fifteen years (clause 93).

(3) The term "enhancement" has been distinguished from an increase of rent on account of increase of area (clause 29). An increase of rent on the ground of an increase in the area of a tenancy is allowed at any time if sanctioned by the Deputy Commissioner on an application made to him, or by a Revenue-officer engaged in preparing a record-of-rights; and, in addition to this, landlords are allowed, under the Bill, to settle separate new lands with any raiyat by private contract (clauses 30 to 32). Provision has also been made for the payment of increased rent where uplands are converted into rice lands, without the intervention of any Government officer [clause 32(b)].

(4) There exists in the present law no provision for the commutation of rents in kind into money-rents. This has been provided for in the Bill (clause 35), on the lines of the Bengal Tenancy Act, 1885.

(5) All raiyats have been protected from ejection from their holdings, except in execution of a decree or of an order of a competent Court (clause 70). The provisions of the Bengal Tenancy Act regarding abandonment have also been inserted in the Bill (clause 73).

(6) The position of non-occupancy raiyats has been very much ameliorated by the present Bill, and such raiyats have been given very much the same rights as non-occupancy raiyats in the rest of Bengal (Chapter VI). No objections to this proposal have been made at the various discussions of the Bill.

(7) The customary rights of the raiyats in regard to the conversion of jungle and waste lands into rice lands have been clearly and specifically recognized (clauses 64 to 69).

(8) Lastly, provision has been made that the Local Government may, in any particular area in which such a course is found necessary, cause to be prepared a record-of-rights of village headmen¹ and other classes of tenants, which record shall be final and conclusive (clauses 123 to 127). Aboriginal cultivators have in certain areas been protected already to some extent by the Chota Nagpur Tenures Act, 1869, and by Bengal Acts V of 1903 and V of 1905; but similar protective measures are necessary in the case of other aborigines in many parts of the Division, and it is to meet the cases of these men that the present proposals contained in clauses 123 to 127 of the Bill have been made. It is not proposed to extend the provisions of these clauses to any area where inquiry does not show that the preparation of such a record is advisable, but it is necessary that the Local Government should have power to protect these aborigines in areas in which the necessity for such protection is proved to exist. In many parts of the Division aboriginal raiyats are entirely unable to meet the expense of civil litigation, and are also not sufficiently intelligent or educated to be able to secure their rights in their lands in the ordinary Civil Courts. The result of the Bhuihari agitation was the Chota Nagpur Tenures Act, 1869, by which Act certain classes of aboriginal raiyats in Ranchi were partially protected. The result of repeated risings on the part of the Mundas was the special legislation of 1903 and 1905 to which reference has been made. The discontent that prevails among more law-abiding classes of aborigines at the want of any protective measures securing them in the enjoyment of their rights is the more to be regretted in that it has given rise to a feeling that the best method of securing redress of any grievances is violent and unlawful political agitation. It is obviously undesirable that any such false impression should exist.

5. The interests of landlords have been equally considered in the Bill in many most important matters, as follows:—

(1) Provision has been made for the preparation of a record of all landlords' privileged lands, i.e., lands in which, by custom, no occupancy-rights can accrue (clauses 117 to 122). In Bengal the only persons who can own lands of a similar character are proprietors of estates; but in Chota Nagpur the fact has been recognized that such privileged lands can be, and often are, held by tenure-holders. The register of such lands will be prepared by Deputy Commissioners, on application made, in areas in which a record-of-rights is not prepared after the commencement of the Bill, and by Settlement-officers during the course of ordinary settlement proceedings in areas where a record-of-rights is prepared after the commencement of the Bill.

(2) Settlement-officers preparing records-of-rights in future have also been given power to settle fair rents in all cases at any time before final publication of the record-of-rights (clause 84) and Revenue-officers are authorized, in areas in which a record-of-rights has been prepared before the Bill comes into force, to assess rents on lands recorded as assessable with rent, but on which no rent has actually been assessed [clause 93 (1) proviso]. Under the existing law no application for assessment of rents on such lands can be entertained, to the very great prejudice of landlords.

(3) Authority has also been given to Revenue Courts to grant compensation to landlords in cases in which false or vexatious allegations of non-delivery of rent receipts are made by raiyats (clause 55).

6. All amendments of any importance which it is proposed by the Bill to make in the existing law are mentioned in the subjoined notes on clauses.

NOTES ON CLAUSES.

Clauses 1 and 2.—The Bill is declared to extend, like the enactments and notifications which are entered in Schedule A for repeal, to the whole of the Chota Nagpur Division except the district of Manbhum. Power is taken to extend the whole or any portion of the Bill, when it becomes law, to the district of Manbhum or any part thereof; and it is declared that when such extension is made the enactments specified in Schedule B shall be deemed to be repealed. Manbhum has long been governed, in tenancy matters, by special enactments, most of which were repealed in the rest of the Chota Nagpur Division by Bengal Act I of 1879; and it is expected that in course of time it will

be possible to bring the Bill into force in that district, so that the whole Division may be subject to the same law.

Clause 3 (vi).—It is proposed to authorise the Local Government to empower any other officer to discharge the functions of the Commissioner or the Judicial Commissioner of Chota Nagpur in any particular area to which the Bill applies.

Clause 3 (vii).—The Deputy Commissioner has power, under the present law, to transfer his functions to any Deputy Collector. It is proposed to extend this provision by authorising him to transfer any of his functions to any Revenue-officer.

Clause 3 (xi).—This term defines "korkar," that is, shortly, land reclaimed from waste or jungle for the preparation of rice. This term is used in the existing Act (Bengal Act I of 1879), but, owing to the want of a definition of it, very considerable difficulty has arisen in dealing with cases in which such land is in dispute.

Clause 3 (xvi).—This explanation of the words "pay," "payable" and "payment" is new. It is taken from the Bengal Tenancy Act, 1885, and is inserted with reference to the payment of rent in kind (*cf.* clause 35 of the Bill).

Clause 3 (xxv).—This definition of "permanent tenure" is new. It is taken from the Bengal Tenancy Act, 1885.

Clause 3 (xxviii).—This definition of "praedial conditions" is taken from Bengal Act IV of 1897, with amendments designed to meet difficulties that have arisen in connection with the subject in commutation proceedings.

Clause 3 (xxii).—This definition of "rent" is taken, with very slight modifications, from the Bengal Tenancy Act, 1885. Provision has been made that the value of personal services, locally known as *begari*, shall not be included in "rent." In practice in most Courts, at present, the value or price of such services is not deemed to be a portion of the rent.

Clause 3 (xxii).—This definition of the word "village" is based on section 3(10) of the Bengal Tenancy Act, 1885, but does not exactly follow it. Where a survey and record-of-rights have been prepared, the declaration in the record is adopted, subject to any modification made by a competent Court after final publication of the record. It is necessary, however, to have some definition for areas for which such a survey has not been made, and hence sub-clause (b) has been added. In most cases the area of a village is well known and will not be disputed. In cases where disputes arise, provision has been made for a determination of the question. It is not apprehended that sub-clause (b) will often be needed in practice.

Clause 4 is new. It merely describes the various classes of tenants dealt with in the Bill, and follows the Bengal Tenancy Act, 1885, section 4.

Clause 7 defines "raiyat having khunt-katti rights"; that is, a raiyat who is one of those who founded a village and originally cleared the jungle, or is a descendant in the male line of such a raiyat. The term "khunt-katti" is used in section 19 of the existing Act (Bengal Act I of 1879), but no definition of the expression is given in that Act.

Clause 9 reproduces section 18 of Bengal Act I of 1879, with the substitution of "tenure-holder" for "dependent talukdar or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the raiyat." It is understood that the expression "tenure-holder", as defined in clause 5 of the Bill, includes all the persons referred to in the said section 18.

Clause 10 is based on section 19 of Bengal Act I of 1879, which provides for the enhancement of rents of bhuinhars whose tenures are less than 20 years old. No bhuinhars whose tenures are registered under the Chota Nagpur Tenures Act, 1869, are liable to enhancement under the existing law, since their tenures are all more than twenty years old. Their exemption from enhancement is definitely stated in clause 10. Tenants of a similar description whose lands are not so registered are protected by clause 37 of the Bill.

Clause 11(1) reproduces the first paragraph of section 34 of Bengal Act I of 1879, but the words "or otherwise" have been inserted so as to extend the paragraph to transfers of all kinds.

Clause 13 (b) is new. It protects a raiyat or any other cultivator in his rights when the tenure within which his land is comprised is resumed. The word "cultivator" has been used advisedly, in order to protect village headmen and others who might not technically be "raiayats" as defined in clause 6 of the Bill.

Clauses 14, 15, 16 and 17 are almost entirely new. They deal with the question of the settled raiyat and occupancy-rights. The provisions of sections 19, 20 and 21 of the Bengal Tenancy Act, 1885, have been followed, with some modifications, those of importance being as follows—

- (a) in clause 15 (5) and (6) three years have been substituted for one year, because raiyats in Chota Nagpur are in the habit of moving temporarily to the labour districts in Bengal and Assam for periods of more than a year, in search of labour;
- (b) clause 16 gives to Bhuihars and Mundari Khunt-kattidars the rights of settled raiyats. The reasons for this are obvious. If a raiyat, by cultivating lands for 12 years in a village, acquires any status of advantage in the village, the same privilege should *a fortiori* be accorded to any raiyat holding land in the village who is one of the family of the original reclaimers of the village; and this is exactly the position of Bhuihars and Mundari Khunt-kattidars.

The provision in section 6 of Bengal Act I of 1879 which bars the acquisition of occupancy-rights in lands locally known as man or saika is not reproduced in the present clauses. Such lands are dealt with elsewhere. Where they are landlords' privileged lands, they are provided for in clause 44; and, where they are service lands, they will be covered by clause 77.

Clause 18 is new. It embodies section 22 of the Bengal Tenancy Act, 1885, with changes in sub-clause (3), and the addition thereto of a proviso to meet the case of certain village headmen and others who are really cultivators and, by custom, acquire occupancy-rights in their lands.

Clause 19 is new. It embodies section 23 of the Bengal Tenancy Act, 1885, with the addition of a reference to local custom or usage and with the omission of the reference to trees.

Clause 21 is new. It embodies section 25 of the Bengal Tenancy Act, 1885, with an amendment in sub-clause (a) corresponding with that made in clause 19.

Clause 22 is new. It embodies section 26 of the Bengal Tenancy Act, 1885.

Clause 23 embodies section 27 of the Bengal Tenancy Act, 1885. It is similar to paragraph 2 of section 8 of Bengal Act I of 1879, except that the words "in an inquiry under section 24" are not reproduced.

Clause 24 is new. It embodies the section 21 which was proposed in clause 13 of the Bill of July, 1907. The enhancement of rents of occupancy-raiyats by private contract, whether prohibited or not by section 21 of Bengal Act I of 1879, has been very common, and to refuse to recognise the validity of such enhancements when the same have been paid for many years would cause such a disturbance of the relations between landlord and tenant that the greatest dissatisfaction and ill-feeling would result. It is therefore proposed to validate such enhancements when the enhanced rents have been paid for a period of seven years continually, and when the rents are fair and equitable.

Clauses 25, 26 and 27 deal with the future enhancement of the rent of occupancy-raiyats. They reproduce sections 21 to 24 of Bengal Act I of 1879, with the following modifications—

- (a) enhancement under the procedure provided by clause 27 of the Bill is limited [by clause 25(a)] to areas for which a record-of-rights has not been prepared;
- (b) it is declared [by clause 25(b)] that in areas for which a record-of-rights has been prepared enhancement may be made only by order of a Revenue-officer, passed under Chapter XII of the Bill;
- (c) it is expressly declared [by clause 25(c)] that enhancements made otherwise than as now proposed shall not be recognised in any Court;
- (d) the particulars to be entered in applications to the Deputy Commissioner for enhancement have been revised [clause 26], and
- (e) it is declared that rent may be enhanced only on specific grounds; that no enhancement shall be ordered which is, under the circumstances of the case, unfair or inequitable; and that all enhancements shall be limited in the manner prescribed by rules made by the Local Government [clause 27(1), proviso].

Clause 28 is new. It embodies section 36 of the Bengal Tenancy Act, 1885, and authorises the gradual enhancement of rent where an immediate enhancement might be inequitable.

Clause 29 is new. It deals with the distinction between (1) enhancements and (2) increases of rent on account of increased area. It will be noticed that a payment of increased rent for lands converted from waste or jungle into rice lands is not to be deemed an "enhancement." Such reclamations are common, and rent is payable for the converted lands in accordance with different customs in various villages; and it would be inequitable to refuse to allow private contracts, in accordance with local custom, for the increase of rent in the case of such reclamations. On the other hand, the commutation of money-rents into rents in kind is a form of enhancement which is at times practised in the Chota Nagpur Division, and should be checked.

Clauses 30, 31 and 32 are new. They deal with increases of rents on account of increases in area. Such increases will only be effected by orders of the Deputy Commissioner or by orders of a Revenue-officer engaged in preparing a record-of-rights. Increases of rent on account of separate new lands settled with a tenant, or on account of the conversion of uplands into rice lands, are not affected (see clause 32).

Clause 33.—The particulars to be entered in applications to the Deputy Commissioner for reduction of rent have been revised.

Clause 34 reproduces section 28 of Bengal Act I of 1879, with the addition of a proviso, taken from section 38 of the Bengal Tenancy Act, 1885, specifying the grounds on which the rent of an occupancy raiyat may be reduced under an order of the Deputy Commissioner.

Clauses 34A, 34B, and 34C are new, and are introduced in order to systematise the procedure for securing a decrease of rent on the ground of a decrease in the area of the land held by an occupancy-raiyat. The clauses are based on sections 38 and 52 of the Bengal Tenancy Act, 1885, and follow clauses 29 to 31 of the Bill, relating to the increasing of rent in respect of excess area.

Clause 35 is new. It deals with the commutation of rents payable in kind into money-rents, and follows very closely the provisions of section 40 of the Bengal Tenancy Act, 1885, a sub-clause being added, at the end, to prohibit the assessment of any amount in excess of a fair and equitable rent.

Clause 36 is new. It embodies section 40A of the Bengal Tenancy Act, 1885, with the substitution of "increased" for "enhanced."

Clause 37.—The first paragraph is new. It declares that the provisions of the Bill relating to occupancy-raiyats shall apply to raiyats having khunt-katti rights.

The provisos reproduce so much of section 19 of Bengal Act I of 1879 as relates to raiyats having khunt-katti rights, but with the modification that the bar to the enhancement of their rent shall operate only where the tenancy was created more than twenty years before the commencement of the new Act, instead of where the tenancy was created more than twenty years before the institution of a suit for enhancement.

Clauses 38 to 43 deal with the rights of non-occupancy raiyats, and follow, with some modifications, sections 42 to 44 and 46 of the Bengal Tenancy Act, 1885. The principal modifications are as follow:—

- (a) the provisions of clause 38 are declared to be subject to local custom or usage;
- (b) clause 39 is new;
- (c) in clause 41 (b) the same protection is given to a non-occupancy raiyat in regard to the use of his land in any manner authorized by custom as is afforded to occupancy-raiyats by clause 19;
- (d) in clause 42 (1) the period within which a suit under that clause may be brought has been made six, instead of three, months, to meet the convenience of landlords;
- (e) it has been provided in clause 42 (2) that a notice of enhancement need not be served through the Court if the landlord prefers some other method of service; and
- (f) it has been declared that the Court may, if it thinks fit, have regard to the rents generally paid by non-occupancy raiyats for similar land in adjoining villages.

Clause 44.—This clause reproduces the concluding portion of paragraph 1 of section 6 of Bengal Act I of 1879, with the modification that, to prevent the acquisition of occupancy-rights in landlords' privileged lands which are leased, the lease must be registered. The other provisions of the clause are new. They bar the acquisition of occupancy-rights in (1) lands which are entered as manjhinas or bethkheta in the register made

under the Chota Nagpur Tenures Act, 1869, and (2) land acquired for the Government of any Local Authority or Railway Company, and Government land in cantonments. The provision in case (1) is new in form only, for it was declared in the preamble to the Chota Nagpur Tenures Act, 1869, that manjhias lands are at the "absolute disposal" of the proprietors of villages, and in section 1 of that Act that "manjhias" includes bethkheta, and section 6 of Bengal Act I of 1879 declares that occupancy-rights cannot be acquired in manjhias lands. The provision in case (2) follows section 116 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907.

Clause 44 also declares that Chapter V (relating to non-occupancy raiyats) shall not apply to landlords' privileged lands or to land referred to in case (2) above.

Clause 47.—The words "express or implied, which exceeds or might in any possible event exceed" have been substituted for "exceeding," in order to meet an objection which has been taken that section 10B of Bengal Act I of 1879 does not prohibit all transfers for a period exceeding five years.

Clause 48.—In proviso (b) words have been inserted to authorise the sale of holdings, under the Certificate procedure, for the recovery of loans granted by the Local Government for the benefit of the holdings otherwise than under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884.

Clause 49 is new. It provides against the transfer of their tenures by Bhuinhars, and also bars the acquisition of occupancy-rights by their lessees. The original Bhuinhars and their descendants are really cultivators, and are in as much need of protection in these respects as any other class of cultivators. In fact, many of these Bhuinhars have already sold their lands to money-lenders and others, and it is very necessary to prevent the remainder from similarly transferring their tenures and reducing themselves to the position of landless labourers.

Clauses 50 and 51 are new. They embody a very important change in the existing law. By clause 51 landlords are allowed, subject to certain conditions, to acquire the holdings of raiyats for works of public utility, as landlords in Bengal are allowed to do under section 84 of the Bengal Tenancy Act, 1885. A similar right of transfer is granted to raiyats and bhuinbar tenure-holders by clause 50, and they are allowed to part with their holdings or tenures in certain circumstances for works of general utility. Provision has at the same time been made for the proper safeguarding of the landlords' interest when transfers are sanctioned under clause 50. Under the existing law, an obstructive landlord, or an obstructive raiyat, may indefinitely delay the completion of some work, from which all alike, landlords and tenants, would benefit.

Clause 52 is new, and is intended to protect tenants from liability to pay rent to a transferee, when the same has been paid *bond fide* to an old landlord whose interest in the tenure or estate has been transferred. The clause embodies section 72 of the Bengal Tenancy Act, 1885, with the addition of the words "in good faith."

Clause 53 is new. It embodies section 53 of the Bengal Tenancy Act, 1885, with the qualification that agreements as to the payment of rent by instalments must be registered.

Clause 54 provides for the payment of rent by money-order, and is so obviously sound that little need be said to justify its inclusion in the Bill.

Clause 55(5).—Under Bengal Act I of 1879, section 12, as amended in 1903, landlords are subject to fine if receipts are not granted for rents paid. Provision has now been made for the punishment of raiyats who bring false accusations against their landlords that receipts have been withheld.

Clause 56 reproduces section 13 of Bengal Act I of 1879 [in the form adopted in section 61 (1) of the Bengal Tenancy Act, 1885,] with the following amendments:—

- (1) the words "or remits" in sub-clause (a) are new: they refer to remittances by postal money-order;
- (2) sub-clause (d) is new: it embodies clause (d) of section 61 (1) of the Bengal Tenancy Act, 1885;
- (3) the words "within three months from the date on which such rent became due" are substituted for the words "within one month from the date of such tender," because in some cases there will be no actual tender.
- (4) sub-clause (2) is new. It declares that, when a deposit is made, it shall be presumed, until the contrary is proved, that it has been lawfully made. This sub-clause is necessary because, if the onus of proving that a deposit is lawfully made is cast on the raiyat, he will lose the benefit of the clause in many cases, although the deposit has been lawfully made.

Clause 57.—Since it is proposed, by sub-clause (a) of clause 56, to allow a tenant to deposit rent when he entertains a *bona fide* doubt as to who is entitled to receive the rent, it is necessary to make some provision to enable the Deputy Commissioner, in cases of difficulty, to refer to the Civil Court claims to amounts deposited. Sub-clause (3) of clause 57 has been altered accordingly.

A further alteration made in clause 57 is the substitution of "as soon as possible" for "within seven days," in sub-clause (2).

In sub-clause (3), the word "agent" has been substituted for "duly authorised agent." A similar change has been made in other clauses of the Bill, taken from Bengal Act I of 1879, in which the expression "authorized agent" or "duly authorized agent" is used.

Clause 59 reproduces section 30 of Bengal Act I of 1879, with modifications which are, in part, based on sections 54 (1) and (3) and 67 of the Bengal Tenancy Act, 1885. The modifications are—

- (1) the omission of the provision which admits of the rate of interest being fixed by agreement; and
- (2) the fixing of the maximum rate of interest at $12\frac{1}{2}$ per cent., with a proviso limiting the interest for the entire year to $6\frac{1}{2}$ per cent.

The rate $12\frac{1}{2}$ per cent. is reasonable. In some cases landlords are believed to realise rents in numerous instalments, and to claim heavy interest on each instalment, so that, although a tenant pays the whole of his rent in the year in which it accrues, yet he is mulcted in heavy sums for interest. It is to meet cases of this kind that the proviso has been framed. It is believed that simple interest at the rate of $6\frac{1}{2}$ per cent. will amply compensate any landlord for a delay in the receipt of rent when the sum is paid in full within the year in which it became due.

Section 16 of Bengal Act I of 1879, which prohibits irregular compulsion for payment of rent, is not reproduced in the Bill. The section is of no practical use; and it seems in any case to be superfluous, having regard to the provisions of the Indian Penal Code (Act XLV of 1860), sections 339 *et seq.*, relating to wrongful restraint and wrongful confinement.

Clauses 64 to 69 (clauses 64, 65, 66, 67 and 69 being new) deal with the subject of reclaiming waste and jungle lands and converting them into rice lands. Raiyats are allowed to convert any lands included in their holdings into rice land, without let or hindrance by the landlord. Outside their own holdings they are similarly allowed to reclaim waste and jungle lands and convert them into rice lands without the consent of the landlord, where they have a customary right to do so, the onus to prove the custom being on the raiyat. In cases in which the consent of the landlord to such reclamation is necessary, it is proposed by *clause 65* to declare that if the landlord does not stop a raiyat making *korkar*, by making an application to the Deputy Commissioner within two years of the commencement of the work of reclamation, he shall be deemed to have consented to the same; and, in the case of Bhuinhars and Mundari Khunt-kattidars, it is proposed by *clause 64 (2)* to declare a presumption that they have a right to convert waste and jungle lands into *korkar* without the consent of the landlord. *Clause 66* will prevent landlords from allowing raiyats to expend years of labour in reclaiming lands and then claiming khas possession of the same, on the ground that no permission to reclaim was given. *Clause 67* prohibits a tenant, who wishes to make *korkar*, from trespassing on to lands in the occupation of another tenant; and *clause 64* only authorizes a raiyat to make *korkar* lands without consent where by custom such consent is not necessary. In the case of Bhuinhars and Mundari Khunt-kattidars, the proposals are that the right to prepare *korkar* without consent shall be presumed to exist until the contrary is proved, because it has been found by experience that, in the case of these tenancies, a custom of preparing *korkar* without consent is recognized, and, in fact, the origin of many of these reclaiming leases was this, that the tenant was to reclaim any land he wished, out of a specified area, and that right of reclaiming any waste land in the village these Khunt-kattidars and Bhuinhars still claim, and not unjustly. *Korkar* lands are ordinarily assessed with rent at rates lower than ordinary raiyati lands, and they are often held rent-free during preparation, or for a number of years; and these facts have been recognized in *clause 69* of the Bill. The question of *korkar* is one of very great importance, and this privilege of reclaiming lands without the consent of the landlord is one that is not uncommon, and is very much cherished by all the aboriginal races of the Division; and *clauses 64 to 69* of the Bill have been framed to make clear what the rights of landlords and tenants in the matter are.

Clause 68 provides that a raiyat shall have occupancy-rights in *korkar* whether he has cultivated it for 12 years or not, and merely reproduces paragraph 4 of section 6 of Bengal Act I of 1879. In this connection it may be mentioned that section 20 of Bengal Act I of 1879 has not been reproduced in the Bill. That section places *korkar* raiyats in a worse position than occupancy-raiyats, and it should therefore be repealed.

Clause 70 is new. It is based on section 89 of the Bengal Tenancy Act, 1885, and protects all tenants from irregular ejectment.

Clause 71 is new. It authorizes the Deputy Commissioner, after summary inquiry, to reinstate in possession a tenant who has been illegally dispossessed by his landlord.

Clause 73 is new. It deals with abandonment, and will be equally beneficial to landlords and to tenants. Many cases now arise in Court in which landlords allege that holdings were abandoned, and raiyats deny this. By the proposed clause, which is based on section 87 of the Bengal Tenancy Act, 1885, raiyats will be protected to some extent against false allegations of abandonment, and landlords will be in a position to prove that their action is *bond fide*, and that they have only entered on holdings really abandoned. The exact wording of the Act of 1885 has not been followed, changes being made in view of local conditions. It will be noticed that under this clause an occupancy-raiyat is allowed to apply within six years to be re-instated in possession of a holding alleged to be abandoned; whereas the period prescribed in section 87 of the Bengal Tenancy Act, 1885, is two years. The period of six years has been fixed in order to bring clause 73 into agreement with clause 233.

Clause 74 is new. It is based on section 47 of the Bengal Tenancy Act, 1885. In many instances tenants are known to execute *kabuliyaats* which purport to admit them to occupation of land, when, in fact, their possession has been long antecedent to the execution of the leases; and it is to meet cases of this kind that the clause has been inserted in the Bill.

Clause 75.—Under the existing law, when a tenant does not attend a measurement of his lands after he has been directed to be present, any record prepared in his absence must be accepted as correct. This is a penal clause of great severity, and has been modified in sub-clause (4) of clause 75 of the Bill, in so far, that, although there will be a presumption as to the correctness of such record, the tenant is not debarred from proving it to be incorrect. Sub-clause (4) is based on section 91 (2) of the Bengal Tenancy Act, 1885.

Clause 76 lays down in clear language that the Bill shall not affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. The clause is based on section 183 of the Bengal Tenancy Act, 1885, and there are annexed to it two *Illustrations* (Nos. I and III) which are not appended to that section. *Illustration III* is inserted because the Bill contains no other express provision as to improvements made by raiyats.

Clause 77 is new. It embodies the first part of section 181 of the Bengal Tenancy Act, 1885. It is introduced into the Bill on the suggestion of the Settlement Department, and is as necessary in Chota Nagpur as is section 181 of the Bengal Tenancy Act in the rest of Bengal.

Clause 78 is new. It is designed to prevent tenants from contracting themselves out of their rights in certain cases, and overrides section 7 of Bengal Act I of 1879, which permits a raiyat to contract himself out of the acquisition of occupancy-rights. The clause follows section 178 of the Bengal Tenancy Act, 1885, with modifications.

Clause 80.—Sub-clauses (n) and (o) are new. The right to take wood, fruit and other jungle produce from village jungles, and to graze cattle in waste, fallow and jungle lands, is a constant source of disputes between landlords and tenants, and the tendency is to deprive raiyats of their customary rights in this matter. In order to afford material for a decision of future disputes, and to secure landlords and tenants in the enjoyment of their respective rights, it is desirable that, when a record-of-rights is prepared under Chapter XII, Settlement-officers should be empowered to make entries in the record of the privileges of landlords and tenants in this matter, and with this object sub-clause (n) has been inserted in clause 80. Similarly, as disputes frequently arise as to the right of raiyats to prepare *korkar*, Settlement-officers are empowered by sub-clause (o) to make entries in the record of the customary rights of residents in regard to this matter.

Clause 84 is new. It is based on sections 104 and 104D of the Bengal Tenancy Act, 1885, and authorizes Revenue-officers to settle fair rents under rules to be made by the Local Government. The principle of this clause was accepted without discussion at a recent Conference, at which representatives of landlords and tenants were present.

Clause 85 is new. It is taken from section 105A of the Bengal Tenancy Act, 1885, and authorizes a Revenue-officer, acting under Chapter XII, to decide certain questions which must constantly arise in the assessment of fair rents.

Clause 86 is new. It is based on sections 106 and 109A (2) of the Bengal Tenancy Act, 1885, and authorizes Revenue-officers to try suits for the decision of disputes, subject to an appeal to an officer to be appointed by rule made by the Local Government.

The provision in section 106 of the Bengal Tenancy Act, 1885, that the plaint in a suit before a Revenue-officer should be presented in stamped paper, has been omitted, because stamps are regulated by Imperial legislation.

Clause 87 is new. It is based on sections 107 (2) and 109D of the Bengal Tenancy Act, 1885, and provides for the entry, in the record-of-rights, of rents settled and decisions made under Chapter XII of the Bill.

Clause 88 is new. It embodies section 108 of the Bengal Tenancy Act, 1885, authorizing a Revenue-officer, specially empowered by the Local Government, to revise orders or decisions of Revenue-officers under Chapter XII.

Clause 89.—The reference to section 86, sub-section (2), in the proviso to this clause, is new.

Clause 90 is designed to prevent landlords from securing, during the pendency of settlement proceedings, decrees in the Court of the Deputy Commissioner [as defined in clause 8 (viii) of the Bill] or any Civil Court, in regard to certain matters which can only be decided satisfactorily by Settlement-officers, after careful local inquiry in the village. It is believed that grave injustice is done to aboriginal raiyats in this matter; and, when once settlement proceedings are in progress, it is advisable, for a satisfactory treatment of the matters referred to, that proceedings in Civil and Revenue Courts, situate often at a distance from the subject of dispute, should be stayed. The clause reproduces section 28A of Bengal Act I of 1879, also section 111 of the Bengal Tenancy Act, 1885, which was extended to Chota Nagpur by Notification No. 1379, dated the 5th March, 1908; but the following amendments have been made:—

- (a) the bar to the entertainment of suits or applications in the Court of the Deputy Commissioner or in any Civil Court is declared to extend, in all cases, up to the expiration of a period of three months after the final publication of the record-of-rights;
- (b) the clause is extended also to suits and applications in which there is in issue the existence or non-existence of customary rights to waste-land or jungle-land;
- (c) a proviso has been inserted in sub-clause (1), to protect the landlord against loss during the period for which he is prevented from proceeding; and section 111B (4) of the Bengal Tenancy Act, 1885, has been embodied in sub-clause (2), to stay limitation during that period. These provisions are proposed in accordance with a resolution of a Conference held at Ranchi in August, 1907, at which representatives of all interested were present.

The Settlement authorities attach very great importance to clause 90.

Clause 91 reproduces so much of section 111A of the Bengal Tenancy Act, 1885, as was extended to Chota Nagpur by Notification No. 1379, dated the 5th March, 1908, except the proviso. The proviso (which gives a right of suit under Chapter VI of the Specific Relief Act, 1877), is omitted because Revenue-officers are in a better position to arrive at the facts, by means of local inquiries, than are Civil Courts, before which aboriginal races find themselves placed in a position of great disadvantage.

Clause 92 is new. It embodies sub-sections (1) and (4) of section 111B of the Bengal Tenancy Act, 1885.

Clause 93 reproduces section 28B of Bengal Act I of 1879, with the following amendments:—

- (1) "occupancy holding" has been substituted for "tenure or holding;"
- (2) the clause is declared to be subject to the provisions of clauses 86, 88 and 89, instead of overriding, as section 28B of Bengal Act I of 1879 does, other sections of that Act;
- (3) under Bengal Act I of 1879, enhancement and reduction are barred for a period of seven years: clause 93 of the Bill alters the period to fifteen years in the case of future records, and retains the period of seven years in the case of past records;
- (4) as the law stands at present, Settlement-officers have no power to assess rents on any lands, and in many villages lands have been entered in the record-of-rights as assessable with rents, but no rent has actually been recorded as payable for the same: by the proviso to clause 93(1) Settlement-officers are expressly authorized to assess rents upon such lands in areas where a record-of-rights has already been prepared.

Clause 94.—The words "extracts from," in sub-clause (2), are new.

Clause 95 is new, and is designed with the same object as clause 90. Clause 90 temporarily prohibits the institution of certain suits in Civil and Revenue Courts where the subject-matter of such a suit is situate in an area gazetted for settlement. Clause 95 deals with suits in regard to similar matters instituted before the notification of settlement has

been issued. The suits referred to are suits in regard to customary rights in waste-land or jungle land, to the amount of rent payable in respect of any tenancy in such land, or to the question whether land is included in a tenancy or is the *khās* land of the landlord; and it is provided that no decision of any Court in relation to these matters, affecting the rights of a tenant in an area gazetted for settlement, and decided after the issue of a notification of settlement, shall have final effect. The reasons for this proposed change are that it has been found by experience that Civil and Revenue Courts, sitting at headquarters of districts and sub-divisions, have not the necessary materials before them for the satisfactory decision of such disputes, whereas Settlement-officers, making careful local inquiry into such matters, are in a better position to make full inquiries and do justice to the parties. They are at present hampered in their decisions by the production before them of decrees of Courts operating as *res judicata*, and it is to avoid this that clause 95 is proposed. Decrees of Courts passed after an area is gazetted for settlement, relating to such matters in the said area, will in future be admissible in evidence before Settlement-officers and other tribunals after a record is finally published, but will not be conclusive proof of what is stated therein.

Clause 97 is new. It embodies the first part of section 110 of the Bengal Tenancy Act, 1885.

Clause 98 is based on section 104G, sub-sections (2), of the Bengal Tenancy Act, 1885, which was extended to Chota Nagpur by Notification No. 1379, dated the 5th March, 1908; but materially alters that sub-section. It empowers the Local Government to direct a revision of a record-of-rights at any time, but not so as to affect any rent entered in the record. It also empowers the Local Government to direct the revision of a record-of-rights, in so far as it relates to rents, and a fresh settlement of rents, at any time after the expiration of a period of fifteen years, if the record is made after the commencement of the new law, or seven years if it was made before such commencement; and also authorizes a repetition of such operations at later intervals of fifteen years.

The proviso to section 104G (2) of the Bengal Tenancy Act, 1885, which is already in force in Chota Nagpur, is not embodied in clause 98, because the scope of that clause is very different from that of section 104G (2).

Sub-clause (3) of clause 98 is new. It provides generally for the application of all the foregoing clauses of Chapter XII, where a revision or settlement is directed under sub-clause (1) or sub-clause (2).

Clause 99 is new. Its object is to validate certain records which have already been made.

Clause 100.—Section 10 (1) of Bengal Act IV of 1897 bars the imposition of praedial conditions on tenants of areas for which commutation has been made under that Act. Clause 100 of the Bill goes further, and bars the creation of tenancies with praedial conditions attached (except rent-free tenancies with the sole condition of rendering personal service), and the imposition of any new praedial condition on any existing tenancy. This amendment is considered most salutary. Many of these praedial conditions approach very nearly to *abroads*, which are, in three out of the five districts in the Division, already prohibited by the Bengal Decennial Settlement Regulation, 1793 (VIII of 1793), section 54, and the Bengal Land-revenue Sales Regulation, 1812 (V of 1812), section 3. From the levy of these *rakumātā* and *abroads* raiyata in Chota Nagpur suffer very greatly, and it is eminently necessary to prohibit in no uncertain language the levy of any new praedial conditions. Where they exist already, they are, when legally recoverable, being commuted, and the benefit of all commutation proceedings would be nullified if the levy of new *rakumātā* were not prohibited.

Sub-clause (2) of clause 100 and clause 62 deal with breaches of sub-clause (1) of the former clause.

Clause 101 is new. It is designed to protect a raiyat from being subjected to any praedial conditions in excess of those sanctioned by the general usage of the village, in cases in which the original conditions of the tenancy cannot be ascertained.

The proviso to this clause declares that, when any such conditions have been observed for a period of five years, a Revenue-officer acting under Chapter XIII may presume that the same are observable in accordance with one or other of the two conditions of ancient usage or contract. This proviso has been added at the suggestion of the Settlement Department, in view of the difficulty in many cases of ascertaining the ancient custom of a village, or the exact terms of the original contract of a tenancy.

Clause 102 is new. It declares that, in calculating the value of praedial conditions, their average value for the last 10 years, or for any shorter period for which evidence may be available, shall be taken as the basis of calculation. Clause 102 may be compared with section 40 (4) (b) of the Bengal Tenancy Act, 1885, relating to the commutation of rent payable in kind.

Clause 103 is new. In some cases it is found that the value of praedial conditions levied, together with the rent, exceeds a fair rent, and to provide for such cases this clause enacts that in any such case a Court shall decree in all only an amount which does not exceed a fair rent. The value of these praedial conditions has increased very largely of late years, and praedial conditions which at one time cost a raiyat little or nothing are now in many cases very burdensome and inequitable. Contributions of wood, bamboo, thatching-grass and other jungle produce may be instances. When jungle abounded in all villages, such articles could be provided free of cost and at the expense of a day's labour; but now that in many villages no jungle exists, these articles have to be purchased at considerable expense, or their money value tendered to landlords.

Clause 104 follows almost exactly section 4 of Bengal Act IV of 1897, the following alterations being made in sub-clause (3):—

- (a) the word "only" has been inserted;
- (b) the words "with established custom or usage or with any contract made when the tenancy commenced" have been substituted for "with ancient custom;" and
- (c) the Revenue-officer has been directed to follow the procedure prescribed in the new clause 102.

With reference to the second of these alterations, it may be explained that the Settlement Department were of opinion that sections 4 and 9 of Bengal Act IV of 1897 were inconsistent; and, to remedy this ambiguity, it has been distinctly stated in clauses 104 and 110 that the praedial conditions to be considered in commutation proceedings are those payable in accordance with custom or usage, or in accordance with any contract made at the time of the creation of the tenancy. It is obvious that, when payments have been made for a number of years, a presumption will arise, and be given effect to, that the payment is in accordance with one or other of these conditions.

Clause 108.—Power is given to the Local Government to appoint an officer to hear first appeals, in place of the Deputy Commissioner.

Clause 110.—The insertion of references to "established custom or usage" and "contract made when the tenancy commenced," in sub-clauses (1) and (4) of this clause, is explained in the note, *supra* on clause 104.

Further amendments made in this clause are—

- (a) the substitution of "each tenant" for "the general body of tenants," in sub-clause (1); and
- (b) the omission from sub-clause (8) of the provision that plaints should be presented on stamped paper—stamps being regulated by Imperial legislation.

Clause 111 is new. It follows clause 87 of the Bill, and provides for the correction of the record-of-rights in commutation proceedings where a correction is made in the same by a suit under clause 110(8).

Clause 112 is new. Under the existing law, in certain cases, when Settlement-officers have proceeded to take measures for the commutation of praedial conditions, objections have been taken to the proceedings on the ground that the payments are payments of rent in kind and not praedial conditions. To meet this difficulty, Revenue-officers acting under this Chapter, and officers acting under clause 35, are given summary powers of deciding whether a payment is of the nature of a praedial condition or not.

Clause 117.—The whole of this clause, except the matter printed in Roman type in sub-clause (i), is new. The clause defines the expression "landlords' privileged lands."

Clause 118 is new. It is based on section 117 of the Bengal Tenancy Act, 1885, and empowers the Local Government to direct a survey and record of landlords' privileged lands.

Clause 119 is new. It is based on section 118 of the Bengal Tenancy Act, 1885, and authorises a Revenue-officer, on the application of landlord or tenant, to ascertain and record whether land is or is not landlords' privileged land. The clause will have no application where a record has been or is being made under clause 118.

Clause 120 is new. It declares that Revenue-officers acting under clause 118 or clause 119 shall proceed in the manner prescribed by rules made by the Local Government under clause 256, and, following section 120(2) of the Bengal Tenancy Act, 1885, directs that they shall presume that land is not a landlords' privileged land until the contrary is proved.

Clause 121 is new. It declares that, where any land in a village has been registered as manjhibas or bethkheta under the Chota Nagpur Tenures Act, 1869, no other lands in that village shall be recorded as being landlords' privileged lands. The reason for this declaration is that it is to be inferred that any privileged lands that exist in such villages were recorded at the time of the Bhuinhari Settlement.

Clause 122 is new. It provides for an appeal in all cases against decisions or orders of Revenue-officers in matters relating to landlords' privileged lands.

Clause 123 is new. It authorizes the Local Government to cause to be prepared a record of the rights and obligations of certain classes of tenants in any local area, which record is declared, by clause 127 of the Bill, to be final.

Raiyats having khunt-katti rights, and village headmen, are specifically mentioned in clause 123, because they are persons particularly needing and deserving protection. It has been found that the customary rights of these persons have been consistently disregarded in certain areas, and that great injustice has been the result. In parts of Singhbhum, village headmen, who are in reality in many cases both cultivating raiyats and hereditary tenure-holders with specific rights, have been evicted from their tenancies by powerful landlords without any regard to their customary rights and ancient privileges, and some means of protection for these unfortunate people is eminently necessary.

There are many other classes of aboriginal tenants whose rights are equally disregarded and who are as helpless as the classes referred to above, and it is eminently necessary to make some provision for safeguarding their interests in case of necessity. For this reason sub-clause (c) has been inserted. In the Sonthal Parganas (a district inhabited by aborigines of the same or similar races as those of Chota Nagpur), a record-of-rights prepared by the Settlement Department is always conclusive evidence of the facts recited therein, and the effect of this has been to ensure protection to landlord and tenant alike in the enjoyment of their just rights.

Clause 124 is new. It directs that, when any final record is published under Chapter XV, notice shall be given to all persons known to be interested in the lands, the record of which is being prepared, in such manner as the Local Government may prescribe by rule. The object of this provision is to ensure that all such persons may have every opportunity of making, in due time, any objections to entries or omissions in the record.

Clause 125 is new. It provides for the trial of regular suits by Revenue-officers after the publication of the record, and follows section 160 of Bengal Act I of 1879, relating to the preparation of records-of-rights in the case of Mundari khunt-kattidars.

Clause 126 is new. It directs the correction of records in accordance with decisions arrived at under clause 125.

Clause 127 is new. It declares that records, when finally published or amended under clause 126, shall be conclusive evidence of the facts therein stated. The clause is based on section 164 of Bengal Act I of 1879.

Clause 128 is new. In many cases cultivating raiyats and tenure-holders have been misdescribed in deeds executed by themselves and others, and it is therefore proposed in this clause that, in all investigations under this Chapter, Revenue-officers shall inquire into the real origin and nature of the tenancy and the real status of the tenant, notwithstanding any misdescription in any document.

Clause 130.—A reference to applications has been inserted.

Clause 131.—A reference to applications has been inserted. A new clause, (d) has been inserted, with reference to the provision in clause 3 (viii) that powers of the Deputy Commissioner may be transferred to a Revenue-officer.

Clause 132.—A reference to Revenue-officers has been inserted, with reference to clause 3 (viii).

Clause 133 has been given general application, instead of being confined, like section 147 of Bengal Act I of 1879, to suits for arrears of rent.

Clause 134 reproduces section 37 of Bengal Act I of 1879, with the following amendments:—

- (i) applications have been mentioned, wherever necessary;
- (ii) sub-clauses (1) and (2) have been confined to tenancies of agricultural land;
- (iii) sub-clause (3) has been confined to suits under the new Act, and to tenancies of agricultural land, but has been extended to all tenancies of such land;
- (iv) sub-clauses (5), (6) and (8) are new.

The most important amendments are the insertion of sub-clauses (5) and (6), which declare that suits or applications to recover possession of agricultural land, brought by landlords against cultivators or village-headmen, shall be triable only by the Deputy Commissioner [as defined in clause 3 (viii)].

It is hoped that this change will result in the more effectual administration of justice. It is believed that Civil Courts are not in a position to deal satisfactorily with cases of the kinds specified in sub-clauses (5) and (6), and that they have not the opportunity of ascertaining, by local inquiry on the spot, the actual facts of the cases before them. It is to be noted that section 82 of Bengal Act I of 1879 (clause 172 of the Bill) specially provides for local inquiries in all proceedings under the Act, and it is intended to utilize this section as much as possible.

In sub-clause (8), it is proposed that *all* suits and applications under the Bill which are not mentioned in clauses (1) to (7) should be tried and heard by the Deputy Commissioner [as defined in clause 3 (viii)], and not by any other Court. This provision will advance to some further extent the policy of confining questions between landlord and tenant, so far as may be, to the Revenue Courts.

The words "except as otherwise provided in this Act," in clause 134, will prevent conflict with other clauses of the Bill which give jurisdiction to a specially appointed Revenue-officer or a Civil Court.

Clause 136 reproduces section 39 of Bengal Act I of 1879, but is extended, for the convenience of landlords, to *all* suits and applications. Consequently, applications for enhancements, measurement, commutations, deposits and other matters may be made on behalf of or against any number of tenants collectively. The convenience of this to landlords and tenants alike is clear, and much unnecessary writing and expenditure will be saved. There are two safe-guards against an improper use of the clause, in that the Local Government can interfere when such joint suits or applications are found to be inequitable or inexpedient, and the trying Court has also power to direct separate trials in any cases in which this may seem desirable.

Clause 138.—A reference to applications has been inserted.

Clause 140.—Sub-clause (2) reproduces clause (b1) of section 148 of the Bengal Tenancy Act, 1885, which was extended to Chota Nagpur by Notification No. 1379, dated the 5th March, 1908. The sub-clause is, however, extended to all suits and applications before the Deputy Commissioner relating to the rent of land or to any right or easement arising out of land, instead of being confined, as is section 148 (b1) of the Act of 1885, to suits for rent; and item (iii) (copy of entries in the record-of-rights) is new.

The three concluding clauses of section 47 of Bengal Act I of 1879 are sufficiently covered by sub-clause (c) of clause 139 and sub-clause (2) of clause 140.

Sub-clauses (2) and (3) provide for making the fullest use of the record-of-rights in all suits and applications before the Deputy Commissioner relating to land.

Clause 141 is new. It embodies clause (ff) of section 148 of the Bengal Tenancy Act, 1885, with some slight modifications.

Clause 166 provides for the record of statements of parties and witnesses in English. All Munsifs in the rest of Bengal are now required to record evidence in English in Civil cases, and there is no reason why Deputy Collectors in Chota Nagpur should not be similarly required to record statements in proceedings under the Act in English.

Clause 176.—Following the Bengal Tenancy Act, 1885, section 68, the Deputy Commissioner is prohibited by clause 176 of the Bill from awarding both interest and damages in rent suits.

Before leaving this part of the Bill it may be mentioned that section 86 of Bengal Act I of 1879 has not been reproduced. The section empowers the Deputy Commissioner to fix a term for which a lease is to be granted to an occupancy-raiyat, when the parties do not agree. When the section was enacted the rights of occupancy-raiyate had not been determined, but it is now out of date, since the rights of an occupancy-raiyat are not terminable.

Clause 206.—There is room for doubt under Bengal Act I of 1879, in the case of sales of tenures or holdings in execution of decrees under that Act, whether an appeal lies, according to sections 13 and 14 of the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act VIII of 1865), to the Commissioner, or under section 135 of Bengal Act I of 1879. The latter section indicates that appeals in such cases should lie thereunder, and this has been made clear in clause 206(1) of the Bill, by the insertion of the words "except sections 13 and 14."

Clause 207.—Sub-clause (2) is new. Under the existing law (see the last paragraph of section 123 of Bengal Act I of 1879) it is open to doubt whether other property of a

judgment-debtor in a rent-suit can be sold before the defaulting tenure or holding is sold; and in many cases the defaulting tenure cannot be sold, or it may be expedient not to sell it (see the first proviso in clause 206). The case of a decree for the rent due under a temporary lease which has expired may be cited as an example.

Clause 210.—The proviso to sub-clause (1) is new. It follows the proviso to section 310A of the Code of Civil Procedure (Act XIV of 1882), and is inserted because section 311 of that Code is embodied in clause 211 of the Bill.

Clause 211 is new. It introduces a new principle into the Bill, and is of great importance. It is known that in many cases, in execution of decrees for rent, lands which are not the property of the judgment-debtor are sold, and the greatest injustice results from such sales. There is in the existing law no provision for the setting aside of a sale on the ground of material irregularity, resulting in substantial injury, or on the ground of fraud, but the necessity for some such provision exists. Persons whose property is sold under the Bengal Tenancy Act, 1885, are allowed to file applications under section 311 of the Code of Civil Procedure, to get the sale set aside, and there is every reason for granting to debtors in rent suits in Chota Nagpur the same privilege. Hence clause 211, which is modelled on section 311 of the Code of Civil Procedure, has been introduced into the Bill.

Clause 212 is new. It enunciates a principle that is, it is believed, accepted in many Courts already, and follows the rulings reported in W. R. Sp. Number, page 147, and v. W. R., Act X Rulings, page 22....At the same time, attempts are made from time to time to nullify the effect of sales in execution of rent decrees, to the great detriment of *bond fide* purchasers; and as any want of security in the title of a purchaser in a rent sale affects the interest of judgment-creditors and debtors alike prejudicially in the long run, the principles enunciated in the rulings referred to have been specifically set forth in clause 212.

Clause 227 is new. Considerable difficulty is experienced in proceedings under Bengal Act I of 1879, owing to the fact that the Act is supposed to be, but is not in fact, a Code complete in itself; in regard to limitation, particularly, this difficulty arises. Provision has now been made therefore for the application of the provisions of the Indian Limitation Act, 1877, where they are not inconsistent with the Bill itself, to all proceedings under this Bill.

Clause 228.—The first paragraph reproduces section 42 of Bengal Act I of 1879, but is extended to applications.

The proviso is new. It declares that for particular forms of application there shall be no period of limitation. The applications referred to are such that necessity for them may arise at any period while the applicant has an interest in the land which is the subject of the application. The applications referred to are noted below:—

- (1) application for enhancement of rent (clause 26);
- (2) applications for increase of rent on account of increased area (clause 30);
- (3) applications for reduction of rent (clause 33);
- (4) applications for commutation of rents payable in kind (clause 35);
- (5) applications for consent of the Deputy Commissioner to transfer land in certain circumstances (clauses 50 and 51);
- (6) applications for measurement of lands (clause 75);
- (7) applications for settlement of fair rents (clause 84);
- (8) applications for assessing rent on lands which are assessable with rent, but on which no rent is assessed (clause 93, proviso);
- (9) applications for commutation of padi conditions (clause 104);
- (10) applications for record of landlords' privileged lands (clause 119); and
- (11) applications for consent of the Deputy Commissioner to transfer of land by Mundari khunt-kattidars (clause 237).

Clause 230 reproduces section 44 of Bengal Act I of 1879, with the substitution of "three years from the end of the agricultural year in which the arrear became due" for "three years from the last day of the Bengal or Sambat year, or from the last day of the month of Jeth of the Fasli or Wilayati year, in which the arrear claimed shall have become due." This change follows that made in clause (b) of Article 2 of Schedule III to the Bengal Tenancy Act, 1885, by Bengal Act I of 1907, section 61 (2) (b).

Clause 231.—Section 44A of Bengal Act I of 1879 prohibits successive suits for rent, and was enacted in order to prevent a landlord from harassing tenants by repeated suits. The section was not intended to apply to cases in which a suit is withdrawn with leave to sue again, in which cases a defendant is always paid the costs of the first case, to compensate him for the trouble he has been put to in attending Court; nor was it intended to apply to cases dismissed for default, in which cases leave to sue again is granted under the Act as it stands. This has been made clear by sub-clause (2), which has been added to clause 231. If some such sub-clause were not added, part of a perfectly just claim might be barred by time in the six months during which a fresh suit is prohibited.

Clauses 233 and 234 are new. They allow a period of six years during which an occupancy-*raiyat* or a village headman may sue for recovery of possession of lands from which they have been unlawfully ousted. A landlord is, by Article 139 of Schedule II to the Indian Limitation Act, 1877 (XV of 1877), allowed 12 years within which he may sue a tenant alleged to be improperly in the possession of land, and there appears to be no reason why a tenant should not be allowed at least half that period to sue the landlord if he is unlawfully ousted.

Clause 236.—The amendment made in clause 47 (1) (a) has been repeated in clause 236 (3); and the provision in clause 47 (3) barring registration has been repeated in clause 236 (6).

Clause 237 is new. It gives to Mundari khunt-kattidars the same privileges in regard to the transfer of lands comprised in their tenancies, for works of public utility, as it is proposed by clause 50 to give to occupancy-*raiyats*. The same reasons apply in both cases.

Clause 244 is new. Under the existing law, the realization of any dues from a Mundari khunt-kattidar is a matter of some difficulty; and, as he has no security to offer for loans in time of scarcity, it is found difficult and often impossible to grant him that assistance which other cultivators obtain from the Government. To remedy this, it is proposed in clause 244 to allow the Deputy Commissioner to attach the tenancy of a Mundari khunt-kattidar in certain cases and make such arrangements as he considers suitable for liquidating the debt when decrees or certificates for arrears of rent, cesses or moneys due to the Government are outstanding against the debtor. It is to be noted that the Deputy Commissioner is not bound to take action under this clause, but is allowed the option of doing so, or refusing to do so, as may appear expedient.

Clause 246 reproduces section 160 of Bengal Act I of 1879, with the exception of the provision that plaints should be presented on stamped paper, stamps being regulated by Imperial legislation.

Clause 251 is new. It will secure finality for certain orders and decrees made by Deputy Commissioners and Revenue-officers in proceedings under the Act; the principle being that the action of a Deputy Commissioner or Revenue-officer acting in a *quasi-judicial* character shall not be liable to be set aside by any other Court, provided that his orders or decrees are passed with proper jurisdiction, and that there is no fraud. The words "save as expressly provided in this Act" refer to the provisions for appeal which are contained in Chapter XVI and other parts of the Bill.

This clause is similar in principle to clause 91 of the Bill.

The orders and decrees that it is proposed to make final are the following:—

Clause 27.—Orders by the Deputy Commissioner on applications for enhancement of rent.

- ,, 31.—Orders by the Deputy Commissioner on applications for increase of rent.
- ,, 34.—Orders by the Deputy Commissioner on applications for reduction of rent.
- ,, 35.—Orders by the Deputy Commissioner or a Revenue-officer on applications for commutation of rents payable in kind.
- ,, 42.—Decrees for ejectment of non-occupancy *raiyats* on the ground of refusal to pay a fair and equitable rent.
- ,, 50.—Orders by the Deputy Commissioner consenting or refusing to consent to the transfer of lands in certain cases.
- ,, 55.—Orders passed by the Deputy Commissioner on complaints of non-delivery of rent receipts.
- ,, 62.—Orders passed by the Deputy Commissioner or other officer in cases in which landlords are accused of levying unlawful dues from, or enforcing the observance of unlawful *pradial* conditions by, tenants.
- ,, 63.—Orders by the Deputy Commissioner punishing landlords for extorting payment of rent or interest by *duress*.
- ,, 66.—Orders by the Deputy Commissioner on applications for the ejectment of cultivators preparing *korkar*.
- ,, 73.—Orders passed by the Deputy Commissioner in cases of alleged abandonment.
- ,, 75.—Orders passed by the Deputy Commissioner allowing or disallowing a measurement or enjoining the attendance of tenants during the measurement of lands.
- ,, 86.—Orders or decrees passed by a Revenue-officer in suits under Chapter XII.
- ,, 90 (proviso).—Orders passed by the Deputy Commissioner prohibiting the continuance of waste or damage in respect of waste-land or jungle land.

Clause 252.—Orders passed by a Revenue-officer, assessing rents on lands assessable with rents, but not assessed.

Chapter XIII.—Orders and decrees in proceedings for the commutation of pendi conditions.

Chapter XIV.—Orders in proceedings for the record of landlords' privileged lands.

Chapter XV.—Orders and decrees in proceedings for the record of the rights and obligations of raiyats having khunt-katti rights, village headmen and other classes of tenants in selected areas.

Chapter XVI.—Orders and decrees in matters cognizable by the Deputy Commissioner.

Chapter XVIII.—Orders and decrees in proceedings relating to Mundari khunt-kattidars.

Clause 253 reproduces section 149 of Bengal Act I of 1879, with a slight amendment in sub-clause (d), and with an addition authorising the Local Government to make rules as to service.

Clause 253.—An amendment has been made with the object of authorising Deputy Commissioners to direct the service of their processes by registered post.

Clause 254 is new.

Clause 255 is new. The Bill contains certain clauses prohibiting the registration of certain documents, *etc.*, clauses 47 (3) and 236 (6). In order that effect may be given to those clauses it is necessary that the registering officer should have an opportunity of seeing what the entries in the record-of-rights are, regarding the lands which are dealt with in deeds tendered for registration. Clause 255 has been drafted to meet this point. Under it, it will be obligatory on all persons tendering for registration a document relating to land, in an area for which a record-of-rights has been published and to which the Local Government has specially applied the clause by notification, to tender at the same time a true copy of all entries in the record-of-rights relating to such land.

Clause 256.—Sub-clause (1), and the preliminary portion of sub-clause (2), are new. They follow the form now commonly adopted in giving power to make statutory rules.

In sub-clause (a), a reference to Deputy Commissioner has been inserted.

The words "or publication," in sub-clause (b), are new. The words "where no mode is prescribed by these or any other Act," which appear in section 189, sub-section (2), of the Bengal Tenancy Act, 1885, as in force in the Chota Nagpur Division, have been omitted from sub-clause (b), because it is proposed to declare in clause 252 that the provisions of that clause as to mode of service shall be subject to rules made under clause 256.

Sub-clauses (c), (d) and (e) are new.

Clauses (3), (4), (5) and (6) of section 13 of Bengal Act IV of 1897 are not reproduced, because they are covered by sub-clause (a) of clause 256 of the Bill.

Clause 257.—Bengal Act I of 1879 was intended to supply a Code, complete in itself, of procedure in matters cognizable by the Deputy Commissioner but has in practice been found to be deficient in certain details of procedure. To remedy this defect it is proposed, in clause 257, to empower the Local Government, with the previous sanction of the Government of India, to make rules for regulating procedure, and for applying any of the provisions of the Code of Civil Procedure, with or without modification.

Clause 258 has been shortened with reference to section 24 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899).

Clause 259.—Words as to the effect of rules and notifications have been added—in the form now commonly adopted.

Clauses 260 and 261 are new.

Clause 264.—Section 150 of Bengal Act I of 1879 is not reproduced, because Bengal Act II of 1869 is no longer a living law.

Schedule B.—See notes on clauses 1 and 2, *ante*.

CALCUTTA ;
The 17th August, 1908.

F. G. WIGLEY,
Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 9, 1908.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Lieutenant-Governor of Bengal on the 5th September, 1908, and is hereby published for information, together with the Statement of Objects and Reasons.

CALCUTTA :
The 8th September, 1908. }

F. G. WIGLEY,
Secretary to the Bengal Council.

THE BENGAL REPEALING BILL, 1908.

A

BILL

to repeal the Howrah and Suburban Municipal Police Act, 1884.

WHEREAS it is expedient to repeal the Howrah and Suburban Municipal Police Act, 1884; It is hereby enacted as follows :—
of 1884.

Short title.
Repeal of Bengal
Act IV of 1884.
1. This Act may be called the Bengal Repealing Act, 1908.
2. The Howrah and Suburban Municipal Police Act, 1884, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

The Howrah Municipality has been relieved by the Government of India, with effect from the 1st April, 1908, of all liabilities formerly imposed on it on account of police charges, and the Suburban Municipality was abolished in the year 1888.

It is, therefore, unnecessary to retain the Howrah and Suburban Municipal Police Act, 1884 (Ben. Act IV of 1884), on the Statute Book, and it is accordingly proposed to repeal it.

O. A. OLDHAM.

The 24th August, 1908.



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 23, 1908.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Lieutenant-Governor of Bengal on the 19th September, 1908, and is hereby published for information, together with the Statement of Objects and Reasons:—

CALCUTTA :
The 22nd September, 1908. }

F. G. WIGLEY,
Secretary to the Bengal Council.

THE BENGAL COURT OFWARDS (AMENDMENT) BILL, 1908.

A

BILL

further to amend the Court of Wards Act, 1879.

Ben. Act IX
of 1879.

WHEREAS it is expedient further to amend the Court of Wards Act, 1879; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Court of Wards (Amendment) Act, 1908.

Amendment of
Bengal Act IX of
1879, section 50.

2. At the end of section 50 of the Court of Wards Act, 1879, the following shall be added, namely:—

“ or mortgages on immovable property.”

[Cf. U. P.
Act, III of
1899, s. 38,
concluding
clause.]

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to introduce into Bengal the concluding clause of section 33 of the United Provinces Court of Wards Act, 1899 (U. P. Act III of 1899). The clause will admit of loans being made from the funds of one estate under the administration of the Court of Wards to another such estate. Such loans would only be granted from the funds of solvent estates, and the experience of the Court of Wards in the United Provinces has proved them to be both a remunerative investment and a convenient and economical means of providing funds for indebted estates.

R. T. GREER.

The 15th September, 1908.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Lieutenant-Governor of Bengal on the 19th September, 1908, and is hereby published for information, together with the Statement of Objects and Reasons:—

CALCUTTA : {
The 22nd September, 1908.

F. G. WIGLEY,
Secretary to the Bengal Council.

THE CHOTA NAGPUR ENCUMBERED ESTATES
(AMENDMENT) BILL, 1908.

A
BILL

*further to amend the Chota Nagpur Encumbered Estates Act,
1876.*

WHEREAS it is expedient further to amend the Chota Nagpur vi of 1876, Encumbered Estates Act, 1876 ;

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 55 & 56 Vict., 1892, to the passing of this Act ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Chota Nagpur Encumbered Estates (Amendment) Act, 1908.

**Amendment of
section 2 of Act VI
of 1876.**

2. (1) In section 2 of the Chota Nagpur Encumbered Estates vi of 1876, Act, 1876, as amended by the Chota Nagpur Encumbered Estates v of 1884, (Amendment) Act, 1884 (hereinafter cited as "the said Act"), for the words from "or, when any such property" to the words "such property is situate," the following shall be substituted, namely :—

"or the Deputy Commissioner within whose jurisdiction any such property belonging to such holder is situate, when—

(i) attachment has been made of, or a proclamation has been issued for the sale of, such property in execution of a decree of a Civil Court, or

(ii) such Deputy Commissioner is satisfied that such holder has entered upon a course of wasteful [Cf. Punjab Act II of 1903, s. 5(d).] extravagance likely to dissipate his property."

(2) After the words "during the continuance of such management," in the same section the following shall be inserted [Cf. Punjab Act II of 1903, s. 5(1), prov.] namely :—

"Provided that the consent of the Lieutenant-Governor shall not be given in the case of any holder of property referred to in clause (ii) of this section unless either—

such holder belongs to a family of political or social importance, or

the Lieutenant-Governor is satisfied that it is desirable, in the interests of the tenants of such holder, that such consent should be given."

New section 2A.

3. After section 2 of the said Act the following shall be inserted, namely:—

“2A. (1) For the purpose of making an application under the

Power of Deputy Commissioner to order production of statement of liabilities and assets and documents by holder. preceding section, the Deputy Commissioner may, by written order, require the said holder to produce before him, on a date to be stated in such order,—

(i) a statement in writing, showing—

(a) all debts and liabilities to which the said holder is subject;

(b) the amount, kind and particulars of his property, and [C. of Act XIV of 1882, s. 345.] the annual value of any such property not consisting of money;

(c) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him; and

(d) such other information as the Deputy Commissioner may by his order require, and

(ii) such deeds, documents or papers relating to his estate, which are in the possession, power or control of the holder, as the Deputy Commissioner may deem necessary.

(2) The Deputy Commissioner may by a like order call upon any person in whose possession, power or control he has reason to believe there is any deed, document or paper relating to a debt or liability to which the holder is subject, to submit the same to him for the aforesaid purpose.”

Amendment of sec. 4.

4. (1) In section 4 of the said Act, after clause *thirdly*, the following shall be inserted, namely:—

“fourthly, all sums due in re-payment of loans effected under the power conferred by clause (c) of section 18”

and clause *fourthly* shall be re-numbered clause *fifthly*.

(2) In the same section, the words from “and also in or towards the re-payment” to “by the Manager under this Act,” are hereby repealed.

Amendment of section 5.

5. In section 5 of the said Act, for the words “Urdu and Hindi” the words “and the language of the district or estate” shall be substituted.

Amendment of section 9.

6. (1) In section 9 of the said Act, after the word “lease”—

(a) in the first place where it occurs, the words “or rent-free or maintenance grant,” and

(b) in all other places where it occurs, the words “or grant” shall, respectively, be inserted.

(2) To the said section the following shall be added, namely:—

“Provided that no rent free or maintenance grant shall be set aside or cancelled without the previous sanction of the Commissioner, which may be granted only if he is satisfied that the grant was not made in good faith.”

Amendment of section 10.

7. In section 10 of the said Act, for the words “shall be final,” in the second place where they occur, the words, figures and letter “shall, subject to the provisions of section 10A, be final,” shall be substituted.

New section 10A.

8. After section 10 of the said Act the following shall be inserted, namely:—

“10A. The Commissioner may of his own motion review any order or proceeding under section 6, 7, 8, 9, or 10, and may revise, modify or reverse the same, whether an appeal is presented against such order or proceeding or otherwise.”

Amendment of
section 12.

9. In section 12 of the said Act, for the words "received from the Government under section eighteen" the words, brackets, letter and figures "effected under the power conferred by clause (c) of section 18," shall be substituted.

New section 12A.

10. After section 12 of the said Act the following shall be inserted, namely :—

"12A. (1) When any holder is restored, under section 12, [Cf. Punjab
to the possession and enjoyment of his
Act II of 1908,
Continuance of disabilities after restoration of property, he shall not be competent, without
the previous sanction of the Lieutenant-Governor,—

- (a) to alienate such property, or any part thereof, in any way, or
- (b) to create any charge thereon extending beyond his lifetime.

(2) Every alienation and charge made or attempted in contravention of sub-section (1) shall be void.

(3) No suit shall be brought to charge any person to whom property is restored under section 12—

- (i) upon any promise, made after such restoration, to pay any debt contracted while the management of the property was vested in the manager, or
- (ii) upon any ratification, made after such restoration, of any promise or contract made while the management of the property was vested in the manager,

whether or not there be any new consideration for such promise or ratification."

New section 14A.

11. After section 14 of the said Act the following shall be inserted, namely :—

"14A. (1) The Manager may order all holders of tenures [Cf. Ben. Act
IX of 1879, ss.
Power to order production of titles to tenures and under-tenures on the said property to 37 and 57.]
and under-tenures to produce their titles to such tenures and under-tenures.

(2) Any person who refuses to comply with an order of the Manager under sub-section (1) shall be liable by order of the Deputy Commissioner to a fine not exceeding five hundred rupees."

New sections 18, 18A,
and 18B.

12. For section 18 of the said Act the following shall be substituted, namely :—

"18. After a scheme has been approved by the Commissioner [Cf. Act VI of
Power of Manager to raise money by mortgage, under section 11, the Manager shall, subject to 1876, s. 18.]
sale or loan. to the sanction of the Commissioner, have power,—

- (a) to demise by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the date of publication of the order under section 2, or
- (b) to sell by public auction or by private contract, and upon such terms as the Manager thinks fit, such portion of such property as may appear expedient,

for the purpose of raising any money which may be required for the settlement of the debts and liabilities to which the holder of the property is subject, or with which such property or any part thereof is charged, or,

- (c) to borrow money at such rate of interest as appears reasonable to the Board of Revenue [Cf. Act VI of 1876, s. 4, cl. fourthly.]

for the aforesaid purpose or for the purpose of meeting the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner.

"18A. (1) A mortgagee advancing money upon any mortgage made under section 18 shall not be bound to see that such money is wanted, or that no more than is wanted is raised. [Cf. Act VI of 1876, s. 18.]
Freedom from obligation to inquire into necessity for, or application of, money.

(2) The receipt of the Manager for any moneys paid to him as such shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

"18B. Subject to the sanction of the Commissioner, the Manager shall have power to enter upon any contract or to execute or relinquish any lease or counterpart of a lease, or to take any action not otherwise provided for in this Act which in his opinion is necessary for the proper care and management of the property."

New section 19A.

13. After section 19 of the said Act the following shall be inserted, namely:—

"19A. (1) The Board of Revenue may make such orders as to it may seem fit in respect of the education of any child of a holder whose property is being managed under the provisions of this Act otherwise than on the application of the Deputy Commissioner. [Cf. Ben. Act IX of 1879, s. 21.]
Power to make orders as to education of holder's children. Penalty for disobedience.

(2) Any person who disobeys any order made by the Board of Revenue under sub-section (1) shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees." [Cf. Ben. Act IX of 1879, s. 59.]

New sections 21A and 21B.

14. After section 21 of the said Act the following shall be inserted, namely:—

"21A. All orders or proceedings of the Commissioner and of the Deputy Commissioner under this Act shall be subject to the supervision and control of the Board of Revenue; and the Board of Revenue may, if it thinks fit, revise, modify or reverse any such order or proceeding, whether an appeal is presented against such order or proceeding or otherwise. [Cf. Ben. Act IX of 1879, s. 68.]
Control by Board of Revenue.

"21B. During the period of management—

Institution and defence of suits during management.

(1) no suit shall be brought against the holder or his property unless the Manager is joined as a party; and it shall be lawful for the Manager by himself to defend any such suit as representing the holder;

(2) it shall be lawful for the Manager to institute and prosecute any suit relating to the property of the holder without joining the holder as a party;

(3) no suit shall be brought, or appeal made, by the holder, unless, with the Deputy Commissioner's assent, the Manager is joined as a party."

Amendment of section 23.

15. In section 23 of the said Act—

(a) to the words "nothing in this Act" the words, figures and letter "subject to the provisions of section 21B," shall be prefixed; and

(b) the words "but to all such suits the Manager of such property shall be made a party" shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

1. The object of this Bill is so to amend the Chota Nagpur Encumbered Estates Act, 1876 (VI of 1876), as to impose further checks on the reckless expenditure so prevalent among the landholders in the Chota Nagpur Division; to give increased facilities to Managers appointed under the Act for the proper management of encumbered estates; and to secure estates which, by the operation of the Act, have been restored to solvency from further mismanagement by the proprietors.

2. An explanation of the several amendments proposed is given in the subjoined Notes on Clauses—

NOTES ON CLAUSES.

Clause 2.—Under the existing law, a Deputy Commissioner cannot move to have the Act applied to the immovable property of a proprietor, except when all or any portion of such property has been attached in execution of a decree. Sales of estates and tenures in execution of mortgage decrees do not require the issue of attachment orders by the Civil Courts; consequently a Deputy Commissioner cannot interfere in such cases, nor would mere information of such intended sales enable him to take any steps. It is, therefore, now proposed to empower a Deputy Commissioner to make application also when a proclamation for sale of the immovable property has been issued.

Further, it seems expedient that a Deputy Commissioner should have power, when he is satisfied that the holder of an estate has entered upon a course of wasteful extravagance likely to dissipate the estate, to apply that the Act should be brought into operation regarding it. Proprietors often refrain from making application until they are very heavily encumbered with debts. In consequence of this, estates have often to be kept under the protection of the Act for very lengthy periods, and funds for improving the properties are not available to the extent required. As a restriction upon the application of the Act in the class of cases here referred to, it is proposed that the consent of the Lieutenant-Governor should not be given unless either (1) the holder of the estate belongs to a family of political or social importance, or (2) the Lieutenant-Governor is satisfied that the application of the Act is desirable in the interests of the tenants.

It is considered that intervention by the Deputy Commissioner of the nature proposed would be advantageous, as not only could the remedy be applied at an earlier stage than is now possible, but much-needed improvements could be more easily carried out.

Clause 3.—A Deputy Commissioner will require a statement of facts and figures to support his application.

Clause 4.—The amendment projected in this clause is rendered necessary by clause (c) of the proposed new section 18 (clause 10 of the Bill). The re-payment of loans should find an early place in the order of disbursements, in order to give greater security to investors.

Clause 5.—The provision that notices should be published in English, Urdu and Hindi has been found inconvenient in the case of estates or areas where neither Hindi nor Urdu is the vernacular.

Clause 6.—It is a common practice in Chota Nagpur for a proprietor coming under the Act to keep back a portion of his estate for his use while the rest is being managed; he thus defeats his creditors. Generally such portions of the estate are handed over to the wife or one of the sons, nominally as *khurposh*, or for maintenance. Sometimes a proprietor gives away landed property without any written instrument or gives rent-free grants to his relatives or favourites. The estates are thus impoverished, and it seems right that the Manager should have power, under section 9, to cancel, or at least charge for, such grants. It is proposed, however, that cancellation may be made only with the previous sanction of the Commissioner, and only if he is satisfied that the grants were not made in good faith.

Clause 7.—This is consequential on the new section 10A.

Clause 8.—Under the Act no appeal lies against the decision of the Deputy Commissioner refusing to consider an application by an heir to set aside a lease on the ground of inadequate consideration. It seems expedient that the Commissioner should have power to interfere in any case where a Deputy Commissioner has shown lack of judgment.

Clause 9.—This amendment is consequential upon clause (c) of the proposed new section 18 (clause 12 of the Bill).

Clause 10.—This clause is designed to check improvidence. Proprietors do incur bond debts during the period of their disqualification, at rates of interest which are extravagantly enhanced, owing to their disability to enter into contracts involving them in any pecuniary liability. The result is that as soon as these estates are released, such bond debts are

validated by these proprietors, who very soon find themselves compelled to apply again for protection in order to escape these obligations. The enactment of the proposed new section 12A would tend to make *mahajans* reluctant to advance money, and thus prevent reckless expenditure by the Chota Nagpur landlords.

Clause 11.—It is proposed to introduce by this clause the last clause of section 37 of the Court of Wards Act, 1879 (Ben. Act IX of 1879), and also the penal provision of section 57 of the same Act. The power on the part of a Deputy Commissioner to call for titles and investigate claims is in every way as essentially necessary for the due management of an encumbered as of a ward's estate, and the absence of such a provision in the Act has been found inconvenient.

Clause 12. New section 18.—The Government is advised that, regard being had to sections 4 and 18 of the Act, a Manager of an encumbered estate cannot borrow money elsewhere than from the Government unless he demises to the lender, by way of usufructuary mortgage for a term not exceeding twenty years, the whole or a portion of the estate, and such loans can only be taken for the purpose of paying off the debts and liabilities of the holder. It is expedient that a Manager should be able to borrow from Trust Funds or from any other source, where the terms as to interest are advantageous and are approved by the Board of Revenue, not only for the purpose of paying off debts but also for that of improving the estate. In such cases a simple mortgage will be preferable to a mortgage with possession.

Clause 13. New section 18A.—This new section will merely re-enact two of the provisions of the present section 18.

Clause 14. New section 18B.—Though a Manager can at present grant leases under section 17, he has no power to accept fresh leases, nor has the proprietor who is debarred under section 3 (c). It is proposed that full powers for the proper management of the estate should be given to a Manager.

Clause 15.—A Manager may, under clause "thirdly" of section 4, expend money on the education of a proprietor's children, but there is no power under the Act to compel their being educated, such as is given by the Court of Wards Act, 1879 (Ben. Act IX of 1879). The natural guardians generally set very little value on the proper education of their sons. It is highly desirable that power should be given to the Board of Revenue to enforce the proper education of these boys, since without it no steps to improve them can be taken effectually. Consequently when they succeed to the family estates, they are very prone, like their predecessors, to mismanage the property.

Clause 16. New section 21A.—The Board of Revenue should, it is thought, have power to exercise a general supervision and control, similar to that exercised by it under the Court of Wards Act, 1879.

Clause 17. New section 21B.—Under section 16 of the Act, the Manager can bring suits without joining the proprietor as a party, but this power is confined to suits for the realization of rents and profits. Experience has shown that this power should be extended to title and other suits. A disqualified proprietor may, under the existing law, be left to defend a suit for title against his estate and be compelled to borrow money at a high rate of interest for the purpose of the suit, necessitating fresh encumbrances, and a second application of the Act to his property. Moreover, a disqualified proprietor can at present waste money by presenting appeals in cases where there is no chance of success. The proposed new section 21B is intended to provide a check against extravagant and useless litigation, and to remove the difficulties which arise where the proprietor is antagonistic to the management of his estate under the Act.

Clause 18.—The amendments here proposed are consequential upon the proposed new section 21B.

F. W. DUKE.

The 8th September, 1908.



The Calcutta Gazette.

WEDNESDAY, DECEMBER 2, 1908.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Lieutenant-Governor of Bengal on the 28th November, 1908, and is hereby published for information, together with the Statement of Objects and Reasons:—

CALCUTTA : }

The 1st December, 1908.

F. G. WIGLEY,

Secretary to the Bengal Council.

THE INDIAN LUNATIC ASYLUMS (AMENDMENT) BILL, 1908.

A

BILL

to amend the Indian Lunatic Asylums Act, 1858.

XXXVI of
1858.

WHEREAS it is expedient to amend the Indian Lunatic Asylums Act, 1858;

And whereas the previous sanction of the Governor General in Council, ^{85 & 86} Vict., c. 14, has been obtained, under section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

^{Short title.} 1. This Act may be called the Indian Lunatic Asylums (Amendment) Act, 1908.

^{Amendment of Act XXXVI of 1858.} 2. Section 17B of the Indian Lunatic Asylums Act, 1858, ^{XXXVI of 1859.} shall, so far as the Province of Bengal is concerned, be read as if section 17B referred to parts of Bengal situated anywhere outside Calcutta.

STATEMENT OF OBJECTS AND REASONS.

Section 7 of the Indian Lunatic Asylums Act, 1858 (XXXVI of 1858), declares that a lunatic may be sent to an asylum in a Presidency-town under the simple procedure of an order signed by some person connected with the lunatic and supported by a certificate signed by two medical officers; and, when a lunatic is sent to an asylum under this section, the Visitors or the Superintendent of the asylum may require his friends to engage to pay his expenses in the asylum, unless it appears that they are wanting in means. When it is desired to send a lunatic to an asylum situated outside a Presidency-town, that can only be done (in cases where the Magistracy or the Police do not find it necessary to take action) under the order of a Civil Court, the obtaining of which is apt to cause much delay and expense to the parties.

2. The transfer of the Lunatic Asylum from Dullunda (in Calcutta) to Berhampore has resulted in the loss of the inexpensive procedure provided by section 7 of the Act for the sending of lunatics as paying-patients to an asylum situated in a Presidency-town. It has been found, in consequence, that lunatics in Calcutta who might have been sent to an asylum as paying-patients, had the asylum at Dullunda not been abolished, either are not sent to an asylum at all, or are sent to the asylum at Berhampore as pauper lunatics under the order of a Magistrate or of the Commissioner of Police.

3. By section 17B of the Indian Lunatic Asylums Act, 1858 (which was inserted by Act XVIII of 1886), the Governor General in Council is empowered to direct that any Lunatic Asylum in Bengal which is situated at a greater distance than three hundred miles from Calcutta shall be deemed, for the purposes of the Act, to be situated in the Presidency-town; and it is proposed by the present Bill to amend that section by getting rid of this limitation as to distance. The result will be to admit of a direction being given to the effect that the asylum at Berhampore and the projected asylums at Ranchi (when opened) shall be deemed to be "Lunatic Asylums at the Presidency," and the simple procedure of section 7 will then again become available for dealing with Calcutta lunatics.

The 11th November, 1908.

O. A. OLDHAM.



The Calcutta Gazette.

WEDNESDAY, JULY 15, 1908.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met in the Council Chamber on Saturday, the 11th July, 1908, at 11 A.M.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, presiding.

The Hon'ble MR. W. C. MACPHERSON, C.S.I.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. S. P. SINHA, Advocate-General of Bengal.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. F. W. DUKE.

The Hon'ble MR. W. A. INGLIS, C.S.I.

The Hon'ble MR. H. C. STREATFIELD.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble SIR CHARLES ALLEN, K.T.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE, M.A., B.L.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

The Hon'ble RAI KISHORI LAL GOSWAMI BAHADUR, M.A., B.L.

The Hon'ble MAHARAJA-DHIRAJ BIJAY CHAND MAHTAB BAHADUR OF BURDWAN.

The Hon'ble BABU GAJADHAR PRASAD.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI, M.A., B.L.

The Hon'ble MR. F. A. LARMOUR.

NEW MEMBERS.

The Hon'ble MR. S. P. SINHA and the Hon'ble Mr. F. W. DUKE took their seats in Council.

STATEMENTS AS TO ANARCHISM.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE said:—"I beg leave to make a statement. I have been authorized by the members of the District Boards, the Local Boards, and the Municipalities of the Presidency Division to state that they view with abhorrence the anarchical crimes lately committed, that they are keenly alive to the great benefits of the British rule, and that they undertake to exert all the influence they possess on the side of order and peace in the country. They beg to assure the Government that the great mass of the people are loyal and wholly unaffected by anti-British agitations, and they trust that for the crimes of the few, the people of Bengal as a whole should not be objects of suspicion or in any way suffer; and that the Government will be pleased to go on in its beneficent course of furthering the progress of education, the development of agriculture and industries and of sanitation in the country, and grant a larger measure of self government which it might have been prepared to grant if the incidents of the last two or three years had not happened."

"More than four hundred members of the Boards, being about 90 per cent. of the entire number, most of whom are elected, representatives of over one million of Bengalis, have given me authority in writing. Only two gentlemen have written to say that the statement was unnecessary, and resolutions of two or three public bodies have omitted the last few lines of the statement, though most of their members have individually given an unconditional authority."

"As a sample I beg leave to place before Your Honour a letter from the Vice-Chairman of the 24-Parganas District Board. Referring to your very laudable proposal to make a statement at the next meeting of the Bengal Legislative Council, I unhesitatingly beg to submit on my behalf and on behalf of the District Board, 24-Parganas, that we each and all of us dissociate ourselves from all anarchical movements of a microscopical minority which is looked upon with extreme abhorrence and hatred. It is incumbent on me to assure you that we have not the slightest sympathy with the political propaganda of anti-British fanatics who want to upset a settled Government and introduce chaos and disorder in the place of peace and prosperity, and I would earnestly request you to be so good as to represent the cherished views and sentiments of our Board at the next meeting of the Council."

"It is our fervent prayer that the Government will be graciously pleased to continue their beneficent course of furthering the progress of education, the development of agriculture and industries and of sanitation, and grant a larger measure of self-government."

The Hon'ble BABU GAJADHAR PRASAD said:—"With Your Honour's permission I want to make a statement on behalf of the whole of Bihar. I beg to assure Your Honour that the Biharis do not sympathize with the movement of the Anarchists—rather they view it with a feeling of deep abhorrence. They are of opinion that full patriotism is synonymous with full loyalty to Government. Government is bound to put down anarchy for the welfare of the people, and in taking any measure to suppress anarchism the Government is entitled to the full and earnest support of the people, and I hope the Indians will unhesitatingly and freely give such support."

The Hon'ble THE PRESIDENT said:—"I do not think it is necessary for any Hon'ble Member to state his own views, and unless any other Hon'ble Member has authority to state the views of others, it is perhaps unnecessary to prolong the discussion."

"I think that Hon'ble Members will agree with me that our colleague has rendered public service of some value in obtaining this expression of opinion from the members of the District Boards, Local Boards, and Municipalities who have selected him for nomination to this Council. As he has

stated, the members of these bodies are practically unanimous in their abhorrence of the crimes lately committed and attempted. They desire to assure the Government that the great mass of the people, whom they represent in the local bodies of the Presidency Division, are loyal and wholly unaffected by anti-British agitation; and they express the hope that the crimes of the few will not subject the people of Bengal to general suspicion, nor prevent the Government from pursuing its course of reform and efforts after improvement in administration.

" My hon'ble friend showed me last Thursday the mass of letters which he has received authorizing him to make the statement which he has made to-day on behalf of his constituents. Only two letters out of the hundreds which he showed me fail to express cordial sympathy with the sentiments of loyalty which his statement contains, and the writers of these letters only disagree so far as to say that they do not consider his statement necessary. I am glad that this view was found to be so very exceptional. It has been too long a reproach to men of moderate opinions that they have failed to see the necessity for speaking out in a manly and straightforward way. I hope that we are done with this. I have especially noticed the courtesy and eager cordiality, not to say enthusiasm, which the vast majority of these letters have evinced. They are written by Englishmen, Hindus and Muhammadans; and, whatever the race or religion of the writer, his entire sympathy with the statement which our hon'ble friend desired authority to make is manifested in the clearest manner.

" There were, I think, only two letters, in addition to the two already referred to, which did not accept the whole of the statement proposed. These were from two gentlemen who thought that the last part of the statement might be omitted. One of them explained that as a father and a teacher he had found that it was not well to 'punish and pet' at the same time. He therefore proposed that reform should be suspended until public order was completely restored. I was glad to see that this proposal was made by only two of those who replied to the Hon'ble Member's letter. It may not be a sound thing to punish and pet a child at the same time, but it is quite unsound to deprive one person of benefits because it is necessary to punish another.

" There is no intention on the part of Government to make concessions to disorder, but there is a determination not to allow the crimes of a few to divert it from its policy of just and progressive administration. I think that we have good reason to congratulate ourselves that the Secretary of State and His Excellency the Viceroy have both declared emphatically that they will not stay their hand in the work of reform, and in the just and beneficent rule of this country, because what we believe to be a very minute minority of the people has adopted a course of conduct which calls for the severest repression and punishment.

For my own part I feel that the police must be called on to take special precautions for the prevention of crimes contemplated by a section of the community, and that every effort must be made by the Government, in the interests of sound administration and in the interests of the people themselves, to crush and punish these efforts to disturb the public peace and to incite to, or to commit acts of lawless and wicked violence. But at the same time I cannot admit that my opinion of, or my regard for, the people of India as a whole has undergone any very serious change from the events which have occurred. I do not attribute these events to the people generally, and I decline to condemn the whole population for the crimes of a few.

" I earnestly trust that the clear declaration of loyalty and of regard for order which has been made here to-day, and which is now being made in so many parts of India, will prevent the people generally from being suspected of complicity in, or indifference to, these crimes. I trust also that it will tend to give more courage to those who have found it in the past somewhat difficult to speak for order and for peace and lead them to take up a stronger position in face of the noisy minority that advocate disorder and disloyalty."

QUESTION AND ANSWER.

LOCATION OF THE PROPOSED TRAINING COLLEGE.

The Hon'ble BABU GAJADHAR PRASAD said :—

In view of the facts that Bengal is far more advanced educationally than Bihar, and that the need of a Training College is not so great in Calcutta as in Bihar, will it please the Government to locate the proposed Training College for teachers at Patna or at Bhagalpur ?

The Hon'ble MR. STREATFIELD replied :—

"The location of the proposed Training College has not yet been finally settled. The claims of Bihar will receive careful consideration."

THE BENGAL LOCAL SELF-GOVERNMENT (AMENDMENT) BILL.

The Hon'ble MR. OLDHAM moved that the Bill to amend the Bengal Local Self-Government Act of 1885 be re-committed to the Select Committee for the incorporation of provisions relating to sanitation and provisions for preventing the diversion of the road-cess. He said :—

"It will be within the recollection of this Council that after the presentation of the last Report of the Select Committee on this Bill, the consideration of the measure was, in view of the opinion then expressed, postponed by His Honour the President in order that steps might be taken, with the sanction of the Government of India, to the insertion of provisions for (1) ear-marking the road-cess for the objects for which it is collected, and (2) giving Local Union Committees certain powers in respect of measures of sanitation, conservancy, drainage and water-supply, subject in certain cases to the control of the District Board and the Commissioner, and empowering them to supplement the funds available for such local improvements by permissive local taxation.

"The draft amendments have since been framed, and the sanction of the Government of India has been received to their introduction. I need say little in regard to the proposals for ear-marking the road-cess. The amendments suggested by this Government with this object, which involve amendment of sections 52, 53, 138 and Schedule II of the Act, have been accepted by the Government of India, on condition that power be expressly reserved to Government to condone any temporary or exceptional deviation from the rule. In regard to local sanitation, it is proposed, amongst other provisions, to allow a Union Committee to undertake works of sanitation *suo moto*, subject to the control of the District Board and of rules made by the Lieutenant-Governor; to deal with insanitary villages or insanitary blocks in villages, in accordance with a scheme to be approved by the District Board and the Commissioner; to employ special establishment for the cleansing of villages and to require occupiers of houses to cleanse their holdings; to control the construction of new buildings, and to supplement their income by levying light taxation from the owners or occupiers of property within the Union. Appeals to the District Magistrate and the Commissioner of the Division have also been provided for as a safeguard."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that the Hon'ble Mr. Greer, the Hon'ble Rai Kishori Lal Goswami Bahadur and the Mover be added to the Select Committee on the same Bill.

The motion was put and agreed to.

The Council was then adjourned to a date to be notified hereafter.

CALCUTTA; }
The 14th July, 1908. }

F. G. WIGLEY,
Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, AUGUST 19, 1908.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met in the Council Chamber on Saturday, the 15th August, 1908, at 11 A.M.

Present:

The Hon'ble Mr. R. T. GREER, c.s.i., presiding.
The Hon'ble Mr. W. H. H. VINCENT.
The Hon'ble Mr. S. P. SINHA, Advocate-General of Bengal.
The Hon'ble Mr. W. A. INGLIS, c.s.i.
The Hon'ble Mr. H. C. STREATFIELD.
The Hon'ble Mr. E. P. CHAPMAN.
The Hon'ble SIR CHARLES ALLEN, Kt.
The Hon'ble BABU RADHA CHARAN PAL.
The Hon'ble BABU JOGENDRA CHANDRA GHOSE, M.A., B.L.
The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.
The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, M.A., B.L.
The Hon'ble MAHARAJA-DHIRAJ BIJAY CHAND MAHTAB BAHADUR OF BURDWAN.
The Hon'ble BABU GAJADHAR PRASAD.
The Hon'ble BABU DEVA PRASAD SARVADHIKARY, M.A., B.L.
The Hon'ble Mr. F. A. LARMOUR.

NEW MEMBER.

The Hon'ble Mr. W. H. H. VINCENT took his seat in Council.

QUESTIONS AND ANSWERS.

CENTRAL WEAVING SCHOOL IN SERAMPORE.

The Hon'ble RAI KISHORI LAL Goswami, BAHADUR, asked :—

Will the Government be pleased to state the reasons of the delay—

- (a) in the opening of the Central Weaving School in Serampore, sanctioned by the Government some time ago ; and
- (b) in building the school-house and its adjuncts on the land acquired by the Government for that purpose some time ago ?

The Hon'ble MR. STREATFIELD replied :—

“(a) The delay in opening the Central Weaving School at Serampore is due to the difficulty in securing the services of a properly-qualified Principal and Assistant Principal. The Principal recruited by the Secretary of State failed at the last moment. Further proposals in regard to the selection of a Principal have now been submitted to the Government of India, and it is hoped that a suitable officer will shortly be appointed.

“(b) The building of the school has been postponed until the arrival of the Principal, without whose expert advice it would be inadvisable to erect workshops and machinery.”

KANKINARA BOMB OUTRAGE.

The Hon'ble RAI KISHORI LAL Goswami, BAHADUR, asked :—

Will the Government be pleased to consider the expediency of disclosing the grounds which led the Police—

- (a) to suspect some respectable men in Bhatpara, notably a *pandit* who is well known for his Sanskrit erudition and for purity of character, of having been concerned in what is popularly known as “the Kankinara bomb outrage” ;
- (b) to search their houses, and then to arrest them and to bring them up for trial in the Court of the Deputy Magistrate of Sealdah ; and
- (c) to withdraw the prosecution without disclosing the charges on which they were put on their trial ?

The Hon'ble MR. STREATFIELD replied :—

“ It is inevitable that when some persons of ‘respectable’ position are undoubtedly guilty of crime, the mere fact of respectability will not shield other respectable persons from suspicion when information is received and evidence exists against them. It is also unavoidable that prompt action must be taken on information and evidence produced in such cases, if action is to be of any use. Hence there is unfortunately, in such cases and under such circumstances, the possibility of causing annoyance and inconvenience to persons who may afterwards appear, or prove to be, innocent. The Police have avoided, and do avoid, this as much as possible, and exercise all the care they can, consistently with the public safety. It is impossible, in view of the public interests, to disclose the grounds on which action was taken in this particular case.”

CARrying OF HINDU CORPSES IN THE DUM-DUM CANTONMENT.

The Hon'ble BABU RADHA CHARAN PAL asked:—

(a) Is it a fact, as stated in the *Bengalee* newspaper of July 29th, that a Cantonment Committee at Dum-Dum has passed a Resolution restricting the carrying of the corpses of Hindus between sunrise and 7 in the morning and again between 12 noon and 3 in the afternoon, along Jessore Road?

(b) Is it a fact, as stated in the same newspaper, in its issue of the 31st July, that as many as twelve persons have been fined for carrying corpses along the Jessore Road beyond the hours specified in the aforesaid Resolution?

(c) If so, is the Government aware that such limitation of hours seriously interferes with the religious injunctions of the Hindus relating to the disposal of the dead, the instantaneous removal and cremation of corpses being strictly laid down in the *Sastras*?

(d) Will the Government be pleased, in consonance with its wise and beneficial policy of non-interference with the religious practices of the people, to direct the local authorities to allow the corpses of Hindus to be conveyed to the burning-ghāt along Jessore Road as before?

The Hon'ble MR. STREATFIELD said:—

“The matter will be inquired into.”

ALIPORE REFORMATORY SCHOOL.

The Hon'ble BABU RADHA CHARAN PAL asked:—

(a) Is it proposed to remove the Alipore Reformatory School to Hazaribagh?

(b) If so, has the Board of Management of the Alipore Reformatory School been consulted on the subject, and with what results?

(c) Is it a fact that two Committees appointed by the Government and presided over by Mr. Justice Pargiter and the Hon'ble Mr. Collin, respectively, objected to the amalgamation of the Alipore Reformatory School with the Hazaribagh Reformatory, and that the late Director of Public Instruction, Sir Alexander Pedler, was opposed to the amalgamation and urged the necessity of retaining the Alipore Reformatory near Calcutta?

(d) Is it a fact that Sir Charles Elliott, while Lieutenant-Governor of Bengal, rejected the proposal of amalgamation, which emanated from the Board of Management of the Hazaribagh Reformatory, on the objections raised by the Alipore Board of Management, especially those of Messrs. Garrett and Amir Ali, who were then Members of the Board?

(e) Is it a fact that the late Lieutenant-Governor, Sir John Woodburn, also dropped the proposal of amalgamation?

(f) In the event of the removal of the Alipore Reformatory School to Hazaribagh, will it not be necessary to open a dépôt for boys who are at present working on license, in Calcutta and Howrah, and thereby a large expenditure will be incurred, in building and in acquiring land and in maintaining a new staff of Superintendents and guards, apart from the charges of escorting boys to, and bringing back the Calcutta boys from, Hazaribagh?

(g) Having regard to the fact that, boys in the Alipore School being principally from Calcutta, its suburbs and Bengal Proper, its removal would, in the words of Mr. Justice Pargiter, “add some of the terrors of transportation to those of imprisonment,” will the Government be pleased to drop the proposal of the removal of the Alipore Reformatory to Hazaribagh, or consult public bodies before taking that step?

The Hon'ble MR. STREATFIELD replied:—

“It is proposed to remove the Alipore Reformatory School to Hazaribagh and to amalgamate it with the Reformatory School at that place. The transfer of boys is already taking place.

“The present site of the Alipore Reformatory School has been found altogether unsuitable for the purpose, and the transfer of the school to another site is a matter of necessity. This necessity became urgent owing to the late outbreak of beri-beri in the school. The difficulty of finding a healthy and spacious site in the immediate neighbourhood of Calcutta is almost insuperable and the cost of such a site would be prohibitive.

“After most careful consideration of all the circumstances, the Lieutenant-Governor was fully convinced that, for the sake of the boys' health as well of efficiency and discipline, the amalgamation of the two schools at Hazaribagh was very desirable, especially as the buildings at that place are sufficiently spacious to receive all the boys, and as the amalgamation could therefore be effected promptly and at comparatively small cost. As His Honour was quite satisfied that the amalgamation ought to be carried out, it was not thought necessary to consult the Board of Management. The Board have, however, been informed officially of the intentions of Government. The arrangements for licensing boys have not yet been decided upon. It is not proposed at present to open a separate dépôt in Calcutta.

“It appears to the Lieutenant-Governor to be entirely unreasonable and improper to apply the expression ‘terrors of transportation’ to a land journey of 255 miles, of which 215 can be performed by train. The expression ‘imprisonment’ as applied to detention in a Reformatory School is also misleading under present conditions. These schools are no longer under the Jail Department. They are managed entirely by the Education Department; and every effort is made to secure that their general character shall be as much as possible that of a school and as little as possible that of a prison. The one object of these schools is the reclamation of boys from a career of crime to one of usefulness; and there is reason to believe that the attainment of this object is more easily secured where the boys are altogether removed from the influence of old associates and surroundings. Boys from Assam have always been sent to the Hazaribagh Reformatory School without objection; and there is therefore no reasonable ground for making the removal thither of boys from Bengal a matter of grievance.

“The Government has no intention of dropping the proposal.”

FAMINE IN THE NADIA AND IN THE 24-PARGANAS DISTRICTS.

The Hon'ble BABU RADHA CHARAN PAL asked:—

Will the Government be pleased to state the extent and intensity of famine in the Meherpur Sub-division in the district of Nadia and in Basirhat Sub-division in the district of the 24-Parganas, and the steps taken to alleviate the distress of the people?

The Hon'ble MR. STREATFIELD replied:—

“*District Nadia.*—The area affected in the Meherpur Sub-division is 257 square miles with a population of 160,000. No separate statistics of numbers on relief and expenditure incurred are available in respect of this sub-division. In the district taken as a whole, the area affected is 963 square miles with a population of 532,000 persons. About Rs. 5,85,000 have been distributed in loans under the Land Improvement and Agriculturists' Loans Acts. Relief is being given by means of works carried on through the District Board; gratuitous relief has also been given where needed. Grants aggregating Rs. 1,17,830 have been made by Government for this purpose up to date. Funds have also been raised locally, and a grant of Rs. 2,000 will shortly be made from the Bengal Branch of the Indian Famine Charitable Relief Fund.

This, however, will be devoted solely to the purposes for which this Fund has been raised. On the 1st August, 3,845 persons were employed on works, and Rs. 860 were distributed to 2,276 persons as gratuitous relief for the week. There has been good rain and the prospects of the crops are fair.

"District 24-Parganas.—Government is not aware of any severe distress in the Basirhat Sub-division, although careful inquiries have been made by the Sub-divisional Officer. There has been good rain throughout the district, and prospects of crops are on the whole fair."

THE CHOTA NAGPUR TENANCY (AMENDMENT) BILL, 1907.

The Hon'ble MR. VINCENT then moved for leave to withdraw the Chota Nagpur Tenancy (Amendment) Bill, 1907. He said:—

"This Bill was introduced into Council in the early part of last year. It was then referred to a Select Committee. On a detailed examination it was found that it was open to objection in some particulars and incomplete and deficient in others. It is therefore proposed to proceed no further with that measure, and I have now to ask leave of this Council to withdraw the same."

The motion was put and agreed to.

THE CHOTA NAGPUR TENANCY AND SETTLEMENT BILL, 1908.

The Hon'ble MR. VINCENT moved for leave to introduce a Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant, and the settlement of rents in Chota Nagpur. He said:—

"The law on this subject is at present contained in a number of Acts, mostly Acts of this Council. In the district of Manbhum, however, Act 10 of 1859, which is not, I think, an Act of this Council governs the relations between landlord and tenant. In the rest of the division, Act I of 1879 is in force. It has since been amended in some particulars by two later Acts of 1903 and 1905. There is also a special Act regarding the mutation of praedial conditions, being Act IV of 1897; and finally a number of sections of Act VIII of 1885 being the (Bengal Tenancy Act) are in force in Chota Nagpur excluding the district of Manbhum, by virtue of the notifications of the Government of Bengal specified in paragraph 2 of the Objects and Reasons.

"The present Bill has been framed to supersede and consolidate the Acts at present in force in Chota Nagpur (excluding Manbhum), and by clause 1 of the Bill power has been retained to extend the Bill or any portions of the same to the district of Manbhum, if it should appear advisable to do so. I do not propose to deal with the provisions of the Bill at any great length at this stage of the proceedings. The same are discussed fully in the statement of Objects and Reasons which has been circulated and which is an annexure of the Bill. Moreover, the provisions of the Bill will be considered in greater detail in Select Committee. At the same time, I think it my duty to give the Council some account of the history of the proposed legislation and of the main principles therein contained. Act I of 1879 was amended as I have said in 1903 and 1905. In 1906, further proposals for amendment were made. These proposals were subsequently formulated in the Bill which has just now being withdrawn. After the consideration of that Bill in Select Committee, a fresh amending Bill was drafted by the Government on the basis of the recommendations of the Select Committee, and the new Bill was discussed at considerable length at repeated meetings convened by direction of the Lieutenant-Governor at Ranchi in August last. At these Conferences, representatives of all classes interested in the welfare of landlord and tenant in Chota Nagpur were present and the provisions of the draft Bill were considered and discussed at length and in detail, and finally the same were accepted with some modifications and a final Conference was held at which His Honour presided when the proceedings of the previous Conferences were considered and approved. The Government was then of opinion that it would be inconvenient to pass another merely amending Bill, and that it would be well to take the opportunity of consolidating the unrepealed portions of the existing

law and the proposed changes into one Bill, and in accordance with that view the present Bill has been framed. It also includes some amendments—though comparatively few—of importance which were not considered at the Ranchi Conference.

“Having stated briefly a history of the present Bill, I now wish to lay before the Council the main and important changes which are contained in the same. In the first place, the principle of the settled raiyat, which has been accepted for many years in the rest of Bengal, is now recognized in Chota Nagpur.

“In the year 1901, a suggestion was made by the Government of India that the Lieutenant-Governor should consider the expediency of assimilating the law on this point in Chota Nagpur with the provisions of the Bengal Tenancy Act. His Honour was then of opinion that the Government had not sufficient information in regard to local conditions to enable it to accept the proposal. Since then a quantity of information on the subject has been collected by the Settlement Department, and the Government is now, after a consideration of the same, of the opinion that there are no valid reasons for retaining raiyats in Chota Nagpur, in a less advantageous position in this respect than the raiyats in the rest of Bengal. Similarly, it is proposed in the Bill to ameliorate the position of non-occupancy raiyats. Act I of 1879 practically gives this class of raiyats no rights, and so far as that Act is concerned they are, independent of any customary rights, tenants at will, and are liable to be called upon to pay rack rents and to summary ejection at the hands of the landlord. It is proposed in the present Bill to assimilate the position of a non-occupancy raiyat in Chota Nagpur with that held in the rest of Bengal.

“There is also no provision in the existing Act for the mutation of rents in kind into money rents. Provision has been made on the lines of the corresponding sections of the Bengal Tenancy Acts for such mutations.

“I now come to the question of enhancements of rents of occupancy tenants on which point the Bill makes very material changes in the law. At present the law on the subject of enhancements in Chota Nagpur is contained in section 21 of 1879. Enhancements by private contract are in the opinion of the executive authorities entirely prohibited by section 21 of Act I of 1879, and enhancements can be effected legally only by an order of the Deputy Commissioner. Even Revenue-officers preparing records-of-rights, have no authority to settle rents.

“It is now proposed to change this and to enact that all enhancements of rents in areas where a record-of-rights has been prepared, subject to certain conditions, shall be effected only at periodical revisions of settlement. This proposal was accepted gladly and without a single dissentient voice at the Ranchi Conference. It does not seem necessary, therefore, for me to dwell upon it at any length.

The customary rights of aboriginal raiyats in jungle and waste lands of their villages are a possession which these people greatly cherish. At the same time, they are the subject of constant disagreements and disputes with the landlord; and the difficulty of deciding such disputes satisfactorily is enhanced by the absence in many cases of any documentary evidence regarding the same. To remove this difficulty it is proposed to utilize the services of Settlement Officers engaged in the publication of records-of-rights who will be required under the provisions of the Bill to make a record of such customary rights when preparing a record of other tenants' rights under Chapter 12 of the Bill. This record will have of course only the presumptive value that attaches to the record of rights. Similarly, the customary rights of raiyats in regard to the conversion of jungle and waste lands into rice lands have been clearly and specifically set forth in clauses 64 and 65 of the Bill, and Settlement Officers when preparing records of rights are called upon to include a statement in regard to this right in the record if so directed by the Local Government. This subject of the reclamation of waste lands locally, known as the preparation of *Korkar* or *Khandwat*, was discussed at very great length at the Ranchi Conferences to which reference has been made, and the provisions of the Bill are based entirely on the decisions of that Conference.

" Provision has also been made in Chapter 14 of the Act for the protection of the interest of landlords in those privileged lands in which rights of occupancy do not ordinarily accrue. These lands correspond to the lands commonly termed *serai* in the Bengal Tenancy Act, and the proposals on this point also are based on the decisions arrived at in the Conference. Another very important matter to which attention should be drawn is that discussed in Chapter 15 of the Bill. It has been found in certain backward portions of the division that the customary rights of village headmen and other cultivating raiyats have been systematically disregarded by powerful landlords, and that the aboriginal tenants in such areas have been entirely unable to secure redress for their grievances in the ordinary Civil Courts, and the provisions of this Chapter have been framed for the protection of these tenants where such action is found necessary. It is proposed to empower the Local Government to direct the preparation of the record-of-rights in selected areas which shall be final and conclusive evidence of the particulars recorded therein. It is not the intention of Government to enforce the provisions of this Chapter generally or freely, and it is clearly to be understood that it will be utilized only in particular areas after clear proof of the necessity of special measures for the protection of aboriginal raiyats. There are in the existing law similar provisions for the protection of *Mundari Khunt Katidars* and in the *Sonthal Parganas*, a district inhabited by aborigines of similar races to those that inhabit Chota Nagpur, a settlement record-of-rights is final and conclusive, so that the proposals contained in this Chapter cannot be considered to be either new or untried.

I find I have omitted by oversight one change of some importance which occurs earlier in the Act: I refer to clauses 50 and 51 of the Bill.

" Clause 51 in the Bill is based on section 84 of Act VIII of 1885, and enables a landlord in certain circumstances to acquire a raiyat's holding for purposes of general utility.

" In clause 50 of the Bill, similarly, it is proposed to authorise raiyats to sell their own holdings or a portion of the same for purposes of general utility without the consent of their landlords with the sanction of the Deputy Commissioner. Provision has at the same time been made for safeguarding the landlords' interests before such transfers are sanctioned.

Finally, there are two clauses of the Bill to which special attention should be directed, as they involve principles of very great importance.

" I refer to clauses 95 and 134—sub-clauses (5) and (6). The first of these modifies the effects of Civil and Revenue Court decrees in regard to certain matters in the areas under settlement. The reason for the insertion of this provision is that it is believed that Revenue-officers inquiring locally into the questions referred to in the section are in a better position to ascertain the actual facts than any Civil or Revenue-officers sitting at head-quarters can be, and the Government desires therefore that the inquiries and decisions of Revenue-officers on the questions referred to should not be unduly hampered or limited owing to the existence of decrees of Civil or Revenue Courts, having in view the fact that such decrees are based on insufficient information. At the same time, it is not proposed to treat these decrees as worthless. They are made relevant evidence of the fact stated therein.

" Sub clauses (5) and (6) of clause 124 give the Revenue Courts jurisdiction to entertain certain classes of suits between landlords and cultivating tenants and between landlords and village headmen. Under the existing law, these suits are tried by ordinary Civil Courts.

" It has been found by experience that ignorant aborigines are not able to meet their landlords on equal terms or to secure justice in the ordinary Civil Courts. It is hoped that Revenue-officers will be in a better position to deal with the cases mentioned in these sub-clauses, more satisfactorily, and that they will have more opportunities for ascertaining the actual facts by local inquiry than any Munsif has. In this view, the present sub-clauses were framed. The amendments will, I admit, require most careful consideration in Select Committee.

" I have now discussed the main principles of this Bill, and I cannot, I think, usefully occupy your time by dealing at this stage with the many less

important amendments contained therein. Ample opportunity will be given for the discussion of the same in the course of time. All that is necessary I think for me to do at present is to explain shortly the main principles of the Bill and the reasons which have led to the proposals. This I have attempted to do above, and I have now merely to repeat my request for leave to introduce the Bill."

The Hon'ble BABU KALI PADA GHOSH said :—“Sir, the Bill which has been introduced is much different, both in matter and quality, from the previous Bill which was discussed by the Select Committee in March, 1907, and which has just been withdrawn. The whole of the existing Rent Act of Chota Nagpur has been re-cast by the present Bill, and we feel bound to acknowledge that it is a decided improvement in the previous Bill which was a very meagre and imperfect piece of legislation, drafted with little or no regard for public opinion, and as such it evoked loud complaints from the people whose interests it prejudicially affected. As a matter of fact in discussing the provisions of the said Bill, the Select Committee found that not only several of these were open to objection, but some of them were considered unworkable in their practical operatives, and we are thankful to His Honour the Lieutenant-Governor for allowing the Bill to be dropped at that stage and giving us further opportunities to consider the provisions in the Bill which was to be substituted in its place.

“Last year about this time a Conference was held at Ranchi which was presided over by the Commissioner of the Division and attended by the Deputy Commissioners and some other officers possessing local experience as also by some representative men of the District of Ranchi, and the revised draft of the Bill was discussed by the Conference in five sittings, in one of which His Honour the Lieutenant-Governor presided. To discuss the provisions of a legislative measure at a place where it would operate and amongst people who are directly interested in it, is certainly a right step in the direction of ascertaining its merits and demerits, but unfortunately the procedure adopted in the Conference, namely, to carry every proposal by a majority of votes was not a happy one, and the result was that the protest made by almost all the non official members of the Conference against some very objectionable provisions was negatived by a preponderance of official votes. The object of the Conference was or at least should have been to ascertain the views of the local people by a discussion with them directly on the subject and to give due and mature consideration to such views and not to summarily reject them, simply because the votes recorded in favour of their proposals happened to be less than the votes against them. The present Bill has incorporated almost all the provisions of the revised Bill which was discussed in the Conference and also the sections of the existing Rent Act, and as regards the former the Bill has mainly embodied the result of the discussions in the Conference. The provisions of the revised Bill which were open to objection have therefore found their place in the present Bill, but we may express a hope that the Hon'ble Members of the Select Committee will not throw away our objections simply because they were vetoed by the Conference.

“I do not think it would be proper at this stage to enumerate all the provisions of the present Bill which are objectionable, but it may not be altogether out of place to make a few observations on some of the points which are open to very serious objections.

“Section 134 of the Bill purports to reproduce section 37 of the existing Rent Act, but in so doing it has introduced an innovation which, I may say, conflicts with the very fundamental principles which regulates the scope and character of suits cognizable by Revenue Courts. Clause 5 of the said section confers exclusive jurisdiction to Revenue Courts in the trial of suits for recovery of possession of agricultural lands from the cultivator thereof, on the ground that he has no title to occupy the land and is a trespasser; and clause 6 also makes a similar encroachment on the jurisdiction of Civil Courts. I would appeal to the experience possessed by the Hon'ble Members of the working of Rent Law in other parts of the country, and ask them to consider how far they can endorse such provisions of the Bill as purport to oust the Civil Courts

of their jurisdiction in suits against trespassers and in which complicated questions of title are bound to arise. While in one part of the province the Government is making an attempt to separate the judicial and executive functions in matters criminal, it must be regarded a strange irony of fate so far as another part of the province is concerned that a retrograde step of such a character should be thought necessary.

"Chapter IV of the Bill extends the rights and privileges of a settled raiyat to the raiyats of Chota Nagpur, and although this may be regarded as an innovation so far as Chota Nagpur is concerned, and however much it may be objected to by the landlords, we must say that it is a change for the better, as there is no reason why the rights which have been enjoyed by the raiyats of Bengal and Bihar ever since the passing of the Bengal Tenancy Act should any longer be denied to the raiyats of Chota Nagpur.

"But although we are prepared to lend our hearty support to such provisions of the Bill as are calculated to secure in favour of the raiyats extended and legitimate rights on their raiyati lands, we cannot certainly shut our eyes to the interests of landlords, so far as their *nijjote* lands are concerned. Under the head 'Record of Landlords' Privileged Lands,' we find no lands in a village other than those that have been entered as *manjhias* or *belkhela* in the register prepared under the Chota Nagpur Tenures Act, 1869, shall be recorded as landlords' privileged lands, and that in villages where there have been no demarcation of *manjhias* lands, the privileged lands will mean a certain description of lands and which are entered as such in the register prepared by a Revenue-officer. If these provisions be read along with section 17 of the Bill which confers on a settled raiyat, the right of occupancy on all lands held by him as a raiyat and that the accrual of right of occupancy will have retrospective effect from January, 1907, it will appear that the right of the landlords to keep their *nijjote* lands in their *khaz* possession will be practically done away with. In making these observations, I do not lose sight of the corresponding provisions in the Bengal Tenancy Act whereby retrospective effect was given from two years before the passing of the said Act, but the circumstances of Chota Nagpur are widely different from those of Bengal and Bihar in this respect. I may say that three-fourths of the Chota Nagpur Division, if not more, is under the management of Wards and Encumbered Estates Department, and all the *khaz* lands of the proprietors under such management have been settled with raiyats, as the Managers of such estates do not find it practicable to keep any lands in *khaz* cultivation and the Commissioner of the Division issued distinct instructions to the Managers to let all *khaz* lands to the raiyats for a term or year by year. The settlements which have been made in respect of such lands have not in many cases yet run out and the effect of allowing the accrual of right of occupancy on such lands will not only lead to a destruction of landlords' cherished rights, but will be conferring privileges to the raiyats which they themselves never thought of enjoying. The above remarks apply equally to the cases of other landlords in Chota Nagpur who are not under the management of Wards and Encumbered Estates Departments, as by the general practice prevailing in the division, their *nijjote* lands have mostly been let out on what is called *sajha* or *saika* settlement, and the period of such settlement has not expired in many cases. These provisions will therefore require very careful consideration by the Select Committee.

"Section 50 of the Bill lays down the rate of interest chargeable on arrears of rent which, under the definition as given in the Bill, includes cesses, and this rate for all arrears for a year or more shall not exceed six-and-a-quarter *per cent.* The Bengal Tenancy Act allows twelve and half *per cent.* and the Cess Act allows the same rate and it does not stand to reason why the rate as laid down by the Bill shall not exceed six-and-a-quarter *per cent.*

"I do not think I shall take up any further time of the Council, but I shall make one more observation in regard to section 1 of the Bill which contemplates a future extension of this Act to the district of Manbhum. In the character of its land tenures and in development of trade and industry and in several other respects, the district of Manbhum is much different from other districts in the

division, and the present Act, unless it is modified to suit the conditions of that district, will be productive of great hardship. It is hoped that when such extension will be decided upon, the people of that district will be allowed sufficient opportunity to lay their views before the Government.

"The Bill has been placed in charge of the Hon'ble Mr. Vincent, an officer of ripe judicial experience and possessor of an intimate knowledge of the part of the country for which the Bill is intended, and we feel sure that in piloting the measure the Hon'ble Member will steer clear of all bias against any particular section of the people, either landlords or raiyats, and that he will be pleased to bestow a patient and careful consideration for our suggestion in the Select Committee."

The Hon'ble BABU JOGENDRA CHANDRA GHOSE said:—"It is a matter of satisfaction to find that many of the provisions of the Bengal Tenancy Act are going to be introduced into the Chota Nagpur Law. In my humble opinion it would have been very much better if the whole of the Bengal Tenancy Act was introduced in the Chota Nagpur Bill with the addition of a certain number of provisions embodying the customary law of that province. The law relating to landlords, as prevailing in Chota Nagpur and the Sonthal Parganas, has not been of a very satisfactory character. The poverty of the people is owing no doubt greatly to the poverty of the soil, but to some extent also to the paternal system prevailing there by which free contract is restricted and the flow of capital prevented, except the capital of the coal speculators. It would have been very much better if Chota Nagpur and the Sonthal Parganas were regulation districts governed by the same laws which have made the Bengal cultivator prosperous. The constant interference of the Revenue-officers did not make the Bengali cultivator prosperous before 1859.

"It was when the Civil Courts came in, and the system which is now sought to be introduced in Chota Nagpur was abolished in Bengal, that the Bengali cultivator prospered. It is difficult to state all the defects, but the fact remains that from that time alone the prosperity of Bengal dates. I cannot approve of the new provisions by which the jurisdiction of the Civil Courts in very many important matters is being taken away. It is not a move in the right direction. The Chota Nagpur landlords' Association have objected to a great many provisions of the Act, and I dare say that the Select Committee will carefully consider every one of them. I cannot but congratulate the framers of the Bill on the rights given to non-occupancy raiyats and the restrictions placed on the constant enhancement of rents and other protection for the tenant. The present law of Chota Nagpur has mainly caused a very large proportion of the population to migrate to the tea gardens, and more than three-fourths of the landlords are insolvents under the present conditions. I do not believe that the constant paternal care of the Revenue-officers has been conducive to the good of the country, and I should very much like to have the same system prevailing there as in Bengal."

The Hon'ble BABU DEVA PRASAD SARVADHIKARY said:—"I had not intended at this stage to take part in the discussion, particularly as I see from the Agenda that I shall have the honor of taking part in the proceedings of the Select Committee. But I cannot however refrain from observing from the discussion we have just listened to, that there is undoubtedly a feeling in some quarters that the Bill does not go far enough, and in others that the Bill goes quite the other way. Although there have been Conferences at Ranchi, there is no doubt that the matter has not been as fully thrashed out as it might have been and ought to be. Taking part in the proceedings of the Select Committee, I shall be very sorry two years hence to have it said that the Bill is incomplete, or to have used language with reference to it such as has been heard in the neighbourhood of this table and even by the Hon'ble member in charge of the present Bill. It therefore appears to me that this, like many another measure that has been similarly characterised, is one that should not be hurried through either in the Select Committee or the Council, and the point I should like to submit to the Council at this stage is that more time should be given for the consideration of the matter in the Select Committee.

than it was proposed to give so far as I can gather from the proposal about to be submitted for the acceptance of the Council.

"Reference has been made to the benefits derived from a discussion of matters locally, and it has been stated that more than one local conference has been held. Such a procedure is likely to be beneficial to all concerned, but it may be a matter for consideration. Even now whether further information should not be similarly obtained before the matter is finally disposed of. Of course as regards time I do not think that considerations of the character that the period of deputation of the Hon'ble Member in charge of the Bill is limited, will be allowed to influence the situation.

"There is another matter which I would like to refer to at this stage and that is with regard to the Sonthal Parganas which will have neither the benefits of the Bengal Tenancy Act or the Chota Nagpur Tenancy Act, although the Parganas are in many ways closely allied to Chota Nagpur. Attention to this matter was drawn by the Hon'ble Mr. Jogendra Chunder Mookerjee, and it was thought that when the consideration of the Chota Nagpur Bill would be brought up, the position of the Sonthal Parganas would also be considered. The question is whether that should not be taken up at an early and convenient time, and whether it is not convenient to be taken up with this Bill. Regarding other matters, I should not make any observations just now: there will be time enough in the Select Committee. I will, however, say that having regard to the very divergent opinions still prevailing with regard to the amended Bill, the Select Committee should have much more time to consider the matter than is proposed to be given."

The Hon'ble Mr. VINCENT in reply said:—"I should like to reply very briefly to one or two criticisms that have been offered on this Bill. I am very grateful to the Hon'ble Babu Kali Pada Ghosh for the very kindly manner in which he has spoken of me and also I think I may say for the moderate manner in which his criticisms of the Bill, have been worded.

"It was unfortunate, however, that he did not specify the particular proposals which were carried at the Ranchi Conference by a majority of officials. The only specific point to which he referred was that of landlords' privileged lands. I think I am right in saying that the Hon'ble Babu Kali Pada Ghosh was one of the members who accepted the proposals on this point made at the Conference which are embodied in the Bill. I agree very distinctly with him that section 134, sub-clauses (5) and (6), and the other section I referred to which modifies the effect of Civil Court decrees should be very carefully considered in the Select Committee. I have stated so in my opening address and it will be so considered.

"I think in regard to one detail the Hon'ble Member is in error, and that is in supposing that instalments of rent only bear interest at six-and-a-quarter *per cent.* Section 59 lays down that 'any instalment of rent which is not paid before sunset of the day when the same is payable shall be deemed an arrear of rent and shall be liable to simple interest not exceeding twelve-and-a-half *per centum per annum*,' and not six-and-a-quarter *per cent.* The proviso is 'that the interest for the entire year in which any arrear accrues shall not exceed six-and-a-quarter *per cent.*' If a raiyat pays his annual rent within the year, he shall not be called upon to pay more than six-and-a-quarter *per cent.* for that year. The second clause was put in to meet the case of certain landlords who have a system of collection by monthly kists who charge an exorbitant rate of interest. I do not think if the demands are paid within the year, that six-and-a-quarter *per cent.* is unreasonable.

"The Bill has not been extended to Manbhum as yet, and before it is extended there is no doubt that the Local Government will very carefully consider the local conditions. Act X of 1859 is, however, very defective in many details, and if this Act is not extended to Manbhum, then it will be necessary to frame a special Act for that district.

"Another Hon'ble Member proposed the extension of the Bengal Tenancy Act and, in fact, I think he went further and said that all non-regulation districts should be made regulation districts. I think it is not very relevant

to this discussion whether non-regulation districts should be made regulation districts, and I do not propose to enter upon that question.

“The extension of Act VIII of 1885 to this division was considered very carefully, and those sections which are applicable and suited to local conditions have been incorporated in the Bill. I found it a little difficult to follow the Hon’ble Member in regard to Act X of 1859. He said that the prosperity of the agricultural population in Bengal began after Act X had been repealed. I am not aware if this is a fact or not. He then proceeded to say that we were introducing Act X of 1859 into Chota Nagpur. This is not so, and is a statement founded on an entire misapprehension of facts. We do not seek to introduce that Act into any part of Chota Nagpur; in fact power has been obtained to repeal that Act in the district of Manbhum; so that if the repeal of that Act was sufficient to gain prosperity for the agriculturists in Bengal, then the raiyats in Chota Nagpur will have the same advantages as their brethren elsewhere.

“One Hon’ble Member has referred to the time given for the discussion of this Bill in Select Committee. The time put down is only approximate, and if necessary will undoubtedly be extended. It is not the intention of Government to hurry through this Bill either in Select Committee or in Council, but having regard to the fact that the majority of the amendments proposed have been thoroughly discussed at great length at the Conferences already mentioned, the period put down for the presentation of the Select Committee’s Report was merely an approximate one. Those sections which have been taken bodily from the Bengal Tenancy Act and introduced into this Bill cannot be the subject of any prolonged discussion, nor do I anticipate that it will be necessary to discuss at any very great length those portions of Act I of 1879 which will remain in force in the division. The remaining portions are not very long and I think, that we may be able to finish in the time described. If it is not done within the time, there will be no objection to an extension being allowed. As for discussing the Bill locally, the only place where it can be discussed is Ranchi, and it has been discussed there at very great length, and I think we shall have to consult the convenience of the other Members of the Committee before making any pronouncement on the matter.

“Lastly, it has been suggested that this legislation should be extended to the Sonthal Parganas, and if I understood the Hon’ble Member correctly, he said a proposal on this point was previously made to Government. No proposal of this kind has, so far as I am aware, been made to Government; nor can the Government make the Act applicable to the Sonthal Parganas without long and detailed inquiries as to the local conditions there. It is very doubtful whether it could be applied with advantage, and the inquiries that would have to be made would be of such a nature that the matter under discussion would be unduly delayed.”

The motion was then put and agreed to.

The Hon’ble Mr. Vincent also introduced the Bill and moved that it be read in Council.

The motion was put and agreed to, and the Secretary accordingly read the title of the Bill.

The Hon’ble Mr. Vincent also moved that the Bill be referred to a Select Committee consisting of the Hon’ble Mr. Greer, the Hon’ble Mr. Duke, the Hon’ble Mr. Streatfield, the Hon’ble Babu Kali Pada Ghosh, the Hon’ble Maharaja-Dhiraj of Burdwan, the Hon’ble Babu Deva Prasad Sarvadikary, and the Mover, with instructions to report at the Meeting of Council to be held on the 5th September, 1908.

The motion was put and agreed to.

The Council was then adjourned to Saturday, the 22nd August, 1908.

CALCUTTA;

The 17th August, 1908.

F. G. WIGLEY,

Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 2, 1908.

PART IVA

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met in the Council Chamber on Saturday, the 22nd August, 1908, at 11 A.M.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, presiding.
The Hon'ble MR. R. T. GREER, C.S.I.
The Hon'ble MR. W. H. H. VINCENT.
The Hon'ble MR. S. P. SINHA, Advocate-General of Bengal.
The Hon'ble MR. F. W. DUKE.
The Hon'ble MR. W. A. INGLIS, C.S.I.
The Hon'ble MR. H. C. STREATFIELD.
The Hon'ble MR. C. E. A. W. OLDHAM.
The Hon'ble MR. E. P. CHAPMAN.
The Hon'ble SIR CHARLES ALLEN, K.T.
The Hon'ble BABU JOGENDRA CHANDRA GHOSH, M.A., B.L.
The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.
The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, M.A., B.L.
The Hon'ble MAHARAJA-DHIRAJ BIJAY CHAND MAHTAB BAHADUR, OF BURDWAN.
The Hon'ble BABU GAJADHAR PRASAD.
The Hon'ble BABU DEBA PRASAD SARBADHAKARI, M.A., B.L.
The Hon'ble MR. F. A. LARMOUR.
The Hon'ble MR. W. BROWN.
The Hon'ble BABU RADHA CHARAN PAL.

NEW MEMBERS.

The Hon'ble MR. W. BROWN and the Hon'ble BABU RADHA CHARAN PAL took their seats in Council.

QUESTION AND ANSWER.

HINDI CHAIR IN THE PRESIDENCY COLLEGE.

The Hon'ble BABU GAJADHAR PRASAD said :—

In view of the facts—

- (1) that under the new Regulations of the Calcutta University, vernacular has been made compulsory up to the B A. standard;
- (2) that a Bengali chair has consequently been established in the Presidency College;
- (3) that the Presidency College is the premier institution of the kind in the province;
- (4) that there are students with Hindi as their vernacular studying in the College;
- (5) that no provision has been made for coaching them in Hindi; and
- (6) that the session has already advanced too far,

will the Government be pleased to create a Hindi chair, without avoidable delay, in the College?

The Hon'ble MR. STREATFIELD replied :—

“Instruction in the vernacular is not actually required by the University Regulations. The University test is practically in composition only, and its sole object is to ensure that students keep up such a knowledge of their own vernacular as to be able to express themselves clearly in it. The number of Hindi-speaking students in the Presidency College is exceedingly small. In the circumstances, the creation of a chair in Hindi does not appear at present to be called for.”

**THE BENGAL LOCAL SELF-GOVERNMENT (AMENDMENT)
BILL, 1908.**

The Hon'ble MR. OLDHAM presented the further Report of the Select Committee on the Bill to amend the Bengal Local Self-Government Act of 1885.

The Hon'ble MR. OLDHAM also moved that the Report which was presented in Council on the 9th March, 1907, and the further Report be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. He said :—

“It will be expected that I should say a few words of introduction to the measure now before the Council, as the Bill has been pending for many years and has come before this Council on three separate occasions.

“The question of the amendment of this Act first arose at the close of 1895, in connexion with a Resolution issued by the Government of India on the subject of the organization of a separate Veterinary establishment in India, in which that Government expressed the view that if, under the existing law, local bodies could not contribute towards the maintenance of veterinary projects, the law should be amended. A Bill was accordingly drawn up in the beginning of 1896, with the object of enabling District Boards to devote some portion of their funds to the establishment and maintenance of Veterinary Dispensaries and to the improvement of the breed of horses and cattle, and the prevention and cure of horse and cattle diseases. The opportunity was

taken of adding provisions to empower District Boards to spend money on the training and employment of medical practitioners and the promotion of free vaccination. The Bill was introduced in Council in the spring of 1896.

"The prevailing scarcity of drinking-water during the summer of the same year drew the attention of Government to the necessity for dealing with the subject of village water-supply in a systematic manner, and this led to the question of village sanitation generally, and to the necessity for raising further funds for the purpose. The Bill, however, was not proceeded with, in consideration, amongst other reasons, of the famine and scarcity of 1896-97, and the possibility, which was then being considered, of the separation of Local from Provincial finance.

"The question of amending the Act was again taken up in 1901, in connexion with a proposal to authorize the levy of tolls on new bridges, until the initial cost and capitalized value of the cost of maintenance or renewal had been recovered. In 1902, a fresh draft Bill was prepared, incorporating provisions with this object, and including the provisions in the Bill introduced in 1896, as well as others. This Bill was again revised and expanded in accordance with certain suggestions made by the Government of India; and a fresh Bill was introduced in this Council by the Hon'ble Mr. Shirres in March, 1904. This Bill was subsequently withdrawn, and another Bill prepared in 1905 containing a number of further provisions, among which the most important were—

- (1) to prohibit the diversion of the road-cess to purposes other than those enumerated in section 109 of the Cess Act;
- (2) to authorize the imposition of a cess for the purpose of guaranteeing interest on money borrowed for the construction of railways;
- (3) to delegate formally to Commissioners of Divisions certain powers which practically, though not nominally, are at present exercised by them;
- (4) to improve the position of Union Committees; and
- (5) to legalize expenditure from the District Fund on minor works of irrigation.

"After further correspondence with the Government of India, certain modifications were made in the Bill; the provisions in regard to ear-marking the road-cess were omitted, and a new Bill was drawn up and introduced in Council by the Hon'ble Mr. McIntosh in November, 1906. The Bill was referred to a Select Committee, and their Report was presented to this Council on the 9th March, 1907. This Committee recommended that, in view of the very decided opposition to the provisions empowering the Boards to impose a cess to meet payments due in respect of a railway or tramway, these clauses should be omitted. They were accordingly excluded from the Bill.

"After the submission of this Report of the Select Committee, the consideration of the Bill was postponed by His Honour the President, in order that steps might be taken to insert provisions for—

- (1) the ear-marking of the road-cess for the objects for which it is collected, and
- (2) giving local Union Committees further powers in respect of measures of sanitation, conservancy, drainage and water-supply, and empowering them to supplement the funds available for such improvements by permissive local taxation.

"The Government of India have recently accepted the recommendation of this Government in regard to prohibiting the diversion of the road-cess, with one condition; and they have approved generally of the proposals framed with a view to enlarging the powers and responsibilities of Union Committees. Additional clauses were consequently drafted, as explained by me at the meeting of this Council held on the 11th July last; and the Bill was re-committed to the Select Committee. The further Report of the Select Committee I have presented to the Council to-day.

"It will thus be seen that this Bill, which originally started in a short draft of a few clauses now nearly 13 years ago, has gone on growing like a snow-ball, but with many vicissitudes, till it has attained its present dimensions and form. From a Bill framed merely for the purpose of enabling District Boards to contribute towards veterinary measures, it has developed into a long Bill of sixty-four clauses, dealing with nearly all portions of the Act, and containing many provisions of far-reaching importance. I trust that it has now reached its final stage.

"Omitting the numerous provisions inserted with the object of removing defects and supplying omissions which many years' experience of the working of the Act has brought to light, I may mention the following as some of the more important objects of the Bill :—

- (1) to legalize the expenditure of District Board Funds on the establishment and maintenance of Veterinary Dispensaries, the entertainment of Veterinary Assistants and the improvement of the breed of cattle and horses;
- (2) to permit District Boards to contribute towards the training and employment of medical practitioners, and the promoting of free vaccination;
- (3) to authorize the levy of tolls on newly-constructed bridges;
- (4) to formally delegate to Commissioners powers which they practically, though not nominally, exercise at present;
- (5) to enable District Boards to spend money on tanks and wells which are not the property or under the control of the Board, and, in the case of famine or scarcity, on minor works of irrigation;
- (6) to permit District Boards to contribute towards the construction and maintenance of hostels attached to private educational institutions of all kinds, to constitute Education Committees and to enable Government to transfer funds to District Boards for this purpose;
- (7) to legalize the expenditure of the District Fund on the construction of residences for the District Engineer, and the payment of advances to members of their establishment for the acquisition or construction of residences;
- (8) to make it obligatory for every District Board to form a Sanitation Committee and appoint a Sanitary Inspector;
- (9) to give to Union Committees certain important powers in respect of local sanitation, drainage and water-supply, and
- (10) to prevent the diversion of the road-cess to purposes other than those enumerated in the Cess Act.

"A copy of the new Bill was circulated to important Associations, with the encouraging result that several useful suggestions have been received, and but little adverse criticism has been offered. The provisions, in regard to the earmarking of the road-cess, appear to have met with universal commendation. I have adopted a few of the suggestions in some of the amendments which stand in my name."

The motion was put and agreed to.

The Hon'ble BABU GAJADHAR PRASAD said :—“ May it please Your Honour—I am satisfied with the Bill which the Select Committee have presented to the Council. I do not desire to object to any provision in the Bill, but I propose the addition of a provision which in my opinion seems necessary.

“There is a provision in section 28 of the Municipal Act relating to the granting of allowance to the Chairman or the Vice-Chairman of the Municipality. I propose the introduction into the Bill of a clause similar to section 28 of the Municipal Act.

"In support of my proposal, I beg leave to say that the work of District Boards will be further multiplied by the operation of the Local Self-Government Amendment Act, which gives additional powers to District Boards and imposes on them corresponding liabilities.

"The nature of the work requires an energetic whole-time Vice-Chairman, and no competent non-official member will be very willing to serve gratuitously. The duties of the Vice-Chairman of the District Board are becoming more and more onerous day by day. The Vice-Chairmen are generally honorary. It is reasonable, therefore, that the District Board should be empowered to grant allowance to the Vice-Chairman. By this I do not mean that every Vice-Chairman should get some allowance; but I certainly mean that if a Vice-Chairman efficiently discharges his duty, and if the District Board thinks fit to grant some allowance to him, the District Board must have the necessary powers. The allowance is a legitimate charge on the District Fund, being one incurred in the performance of the duties imposed by the Act.

"There is also another point which deserves notice. The District Boards are generally more solvent than the Municipalities, and the District Board Vice-Chairman may have to go out on out-door work, and to travel longer distances than a Municipal Vice-Chairman.

"I wish to move—

(1) that after clause 9 (now 11)* of the Bill the following be inserted, namely :—

9A. At the end of section 23 of the said Act, the following shall be inserted, namely :—

'The Vice-Chairman of a District Board may, if the Board thinks fit, receive such allowance as may be fixed by it at a meeting; and

(2) that after clause 26 (1a) [now 27 1]) of the Bill, the following be inserted, namely :—

In the first line of clause *fourthly* of the said section 53, after the word 'payment,' the words 'of the allowance of the Vice-Chairman of the District Board fixed under section 23 of this Act and' shall be inserted."

The Hon'ble MR. OLDHAM said :— "I am afraid these amendments cannot be accepted. Hitherto, the Vice-Chairmen of District Boards have generously performed their duties without any pecuniary recompense. To pay them for the performance of these duties would undoubtedly amount to a change of principle, and as such would require the approval of the Government of India. To make such a reference now would mean the further postponement of this Bill; and even were the Government of India to agree to such a change in principle, the Bill could not be passed during the current session. I think it will be the sense of this Council that this very long pending measure should not be further delayed on account of a proposal, the propriety of which is open to considerable doubt."

The motion was put and lost.

The Hon'ble MAHARAJA-DHIRAJ BAHADUR, OF BURDWAN, said :— "Before moving the amendments standing against my name, I beg to make a few observations on the Bill that we are about to pass into law to-day. It is a matter of gratification to all of us, who take a keen interest in the welfare of the villagers of Bengal, to find that important sections and clauses, have been inserted in the present Bill to improve the sanitary conditions of rural Bengal.

"It is a great Government, Sir, that gives medical aid to the people, but it is a greater Government that also sees to the health of its subjects; as we all know, to comfort the sick and ailing is a noble thing, but it is a nobler endeavour to try and eradicate sickness.

"The Union Committees, and specially the Sanitation Committee of the District Board, should have picked men on their respective bodies, because

* The clauses and sub-clauses of the Bill having been re-numbered under the direction of the Council the present number of each clause and sub-clause is inserted in brackets, wherever the new numbering differs from the old.

otherwise the larger powers that are now being given may, instead of becoming a boon, prove to be a source of oppression and unnecessary annoyance to the villagers and the public at large.

"To those who constantly clamour for more self-government in this country, the amended enactment before us ought to give satisfaction. Here, in this Bill, we have splendid opportunities of showing what capacities we Indians have in managing our own affairs, and I hope, therefore, that those who will be entrusted with the new powers that are being given now, will wield them with ability and usefulness.

"The Indian atmosphere just now seems to be surcharged with outcries for more political powers. No doubt the country is awakening; but this new current of ambition should be watched carefully, so that it might not come as a sudden and rude shock to the awakened and the awakers. Aspirations for self-government can only be healthy for us, if we Indians realize once for all that such things, though very desirable, cannot be demanded, for they have to be deserved. In conclusion, I heartily congratulate the Government on having recognized the absolute necessity of proper village-sanitation in Bengal.

"I beg now to move that to section 41A, in clause 20 (now 22) of the Bill, the following be added, namely:—

- (2) The election of any person to be Chairman of a Union Committee shall be subject to the approval of the District Board.
- (3) If a Chairman of a Union Committee be not elected within the period prescribed in this behalf by rule made under clause (c) of section 138 of this Act, the District Board shall appoint a member of the Committee to be Chairman."

The Hon'ble MR. OLDHAM said:—"I am prepared to accept both of the proposals of the Hon'ble Member contained in his motion. It is very desirable that, if the Union Committee should fail to elect a Chairman, the District Board should have power to appoint one."

There being no opposition, the Hon'ble the President declared the motion carried.

The Hon'ble MAHARAJA-DHIRAJ BAHADUR, OF BURDWAN, by leave of the Council, withdrew the following motion of which he had given notice, namely:—

That in section 99A, in clause 44 (now 47) of the Bill, after the words 'irrigation work,' where they first occur, the words '(other than a canal)' be inserted.

The Hon'ble MAHARAJA-DHIRAJ BAHADUR, OF BURDWAN, also moved that the following be added to clause 48 (now 51) of the Bill, namely:—

- (3) After the word 'road,' in clauses (c) and (d) of the said section 109, the words 'or bridge thereon' shall be inserted.

The Hon'ble MR. OLDHAM, having accepted the amendment, the Hon'ble the President declared the motion carried.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that after proviso (1) (a) to section 86A, in clause 41 (now 43) of the Bill, the following be inserted, namely:—

- (aa) the expenses incurred by the District Board in paying compensation to the owner of any private ferry for the partial or complete loss of income from such ferry, and in recouping itself for the partial or complete loss of receipts in respect of any public ferry referred to in clause (4) of section 52, when such loss results in either case from the construction of such bridge, or the construction or widening of such road-way or foot-way.

He said:—"It will sometimes so happen that the construction of these bridges will injuriously affect some of the private ferries or some of the public ferries, or even at times lead to their extinction. The law on the point is quite clear, that when private ferries are injuriously affected or become extinct in consequence of the construction of bridges, the owner of the private ferry is,

under certain circumstances, entitled to ask compensation from the District Board. In order to obviate all doubt on the point I shall refer to a District Board case reported in Volume 25, Indian Law Reports, Calcutta Series. On page 346 of that volume, the head-note runs thus:—

The District Board of Dinajpore erected a bridge over the river Tulai in consequence of the erection of which ferry, which was within 100 cubits of the bridge and owned by the Maharaja of Dinajpore, who was also the owner of the land taken for construction of the bridge, ceased to exist: Held, that the owner of the ferry was entitled under the Land Acquisition Act to compensation for the loss of the ferry.

"There is another case reported in Volume 34 of the same series, page 485. There the learned Judges observed that:—

In other words, where the ferry landing and the ferry franchise remain precisely as before, though the profits are liable to be depreciated by the new mode of travel legitimately created, no compensation can be claimed; but where by reason of the acquisition itself the exercise of the franchise, or the use of the property pertaining to the franchise, is interfered with, damages can be rightly claimed.

"Now some of these cases clearly go to show that under certain circumstances owners of private ferries will be entitled to compensation if their ferries are affected by the construction of these bridges. But oftener it will happen that District Boards will be deprived of the income derived from private ferries. The income of ferries we all know go to serve useful purposes by helping the District Boards to promote sanitation and primary education in the area over which the District Boards have jurisdiction. Sir, in the new Bill there are several onerous duties imposed upon the District Board, which will necessitate a large expenditure of money. If the District Boards were to lose the income of the private ferries it would be found that there would be less money available for sanitary purposes, and its resources, which would be crippled. Such a crippling of the funds would be undesirable. I think any one that has gone through the various opinions that have been given upon the Bill, in response to Your Honour's invitation asking for an expression of opinion, will find that there is much reluctance on the part of several Associations to the establishment of a toll-bar. They seem to think that it will be a grievous burden on the people and they go further and say it will hamper internal trade. I am not in sympathy with these persons at all; on the contrary, I welcome the introduction of this portion of the measure, for without the levy of a toll it will be absolutely impossible in the present stage of finance of the District Boards to undertake the construction of expensive projects.

"Sir, from those opinions which I have already referred to, Your Honour will be pleased to see that there will be many Members of District Boards who will not cherish the idea and who would naturally be reluctant to vote for the establishment of a toll-bar, for the purpose of constructing a bridge. They will be able to add emphasis to their opposition by pointing out the fact that the Road-Cess Fund will be encroached upon on account of the District Board being liable to pay compensation to owners of private ferries, or there would be a loss of revenue which would retard the promotion of sanitary welfare. The amendment which I propose will really mean the prolongation of the period during which the toll will be collected. One who has any experience of the working of tolls in this country, and I think things are very much the same in other countries, is aware that the opposition and repugnance arises at the very outset; but after they get accustomed to the thing they do not feel the inconvenience due to the paying of tolls, and surely if the period of the levy of tolls is prolonged inconvenience will not be felt by the people. I think, Sir, for these reasons it is inadvisable to cripple the resources of the District Board, which will be the result as I have attempted to point out. I, therefore, submit this amendment for your favourable acceptance."

The Hon'ble BABU KALI PADA GHOSH said:—"It seems to me that the owners of private ferries will be entitled to compensation under the circumstances

referred to in the amendment which is proposed. The cases to which reference has been made by the mover of this amendment settles this point, and I think the expenses incurred should be paid by the District Board. This can be provided for in the Act, and I think the proper place for a provision like this will be in section 86(a)."

The Hon'ble BABU PRASAD SARBADHIKARI said :—" In supporting this amendment, I ask permission to withdraw the amendment in my name which is similar in effect. At the time I was not aware of the fact that my hon'ble friend had sent in this amendment; otherwise it would not have been necessary for me to send in this amendment, though it is larger in scope. In sending in my amendment I had contemplated cases, in which for some reason or other the establishment of a toll-bar would not be possible. But having listened to the Hon'ble Member, I think that the greater portion of my amendment would be covered by his amendment. And I do not think it necessary to press for the acceptance of the remainder of my amendment. I, therefore, beg leave to withdraw my amendment."

The Hon'ble BABU JOGENDRA CHANDRA GHOSE said :—" I am afraid that there is some misapprehension on the part of the mover of this amendment. The last case to which he has referred shows clearly that no owner of a ferry is entitled to compensation on account of the making of improved means of communication which may reduce his profits. The case is not only not in his favour, but clearly against him.

" I can quite sympathize with landlords and owners of ferries who will incur some loss if bridges are made, and if the Government so chooses it may grant them compensation; but this compensation has to be paid by the District Boards. When such an expensive work as a bridge is made it must be made at the cost of the whole district. In such a case, I think it reasonable that private owners of ferries might incur some loss for the good of the public."

The Hon'ble BABU RADHA CHARAN PAL said :—" I support the amendment of my hon'ble friend, Rai Kishori Lal Goswami, Bahadur, and I fail to understand the opposition of my friend on the right. It has been clearly stated by my friend, the mover of the amendment, that it is just and proper if the owner of a ferry is deprived partially or wholly of a loss of income to which he was entitled on account of the construction of a bridge or the widening of a roadway or foot-way he should be compensated. The case which has just been quoted by my friend, the Hon'ble Rai Kishori Lal Goswami, Bahadur, fully supports his contention, and the opposition of my friend on the right and the arguments he has adduced do not in any way convince me that the amendment is not necessary. As far as I understand, he says that the owner of a ferry ought to suffer some loss on account of some improvements by which the District Board benefits. It ought not to be forgotten that the owner of a ferry has obtained this privilege on payment of a certain amount of rent. If then he is deprived of that source of income, or his income is diminished in any way, he is entitled to compensation. I think, therefore, this is a perfectly fair proposal which ought to commend itself to the Hon'ble Members for acceptance."

The Hon'ble MR. OLDHAM having accepted the amendment, the Hon'ble the President declared the motion carried.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, also moved that in proviso (2) to the said section 86A, in clause 41 (now 43) of the Bill, after the letter "a" the letters "aa" be inserted.

The Hon'ble MR. OLDHAM having accepted the amendment, the Hon'ble the President declared the motion carried.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, also moved that after clause (a) of section 86L, in clause 41 (now 43) of the Bill, the following be inserted, namely :—

(aa) the amount of the expenses incurred by the District Board in paying compensation to the owner of any private ferry for the partial or complete loss of income from such

ferry, and in recouping itself for the partial or complete loss of receipts in respect of any public ferry referred to in clause (4) of section 52, when such loss results in either case from the construction of such bridge, or the construction or widening of such road-way or foot-way.

The Hon'ble MR. OLDHAM having accepted the amendment, the Hon'ble the President declared the motion carried.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, also moved that clause 42 (now 44) of the Bill be omitted. He said:—

"I move this amendment not without considerable hesitation. I have not been quite able to realize the object of introducing this provision whether the object is to enable District Boards to make such contributions or to safeguard any grant resolved upon by the District Board, by the sanction of Your Honour, I do not know. I have not been quite able to realize the exact object for which section 88A has been enacted. The reason why this hesitation arises is this, that under the present law there is no provision for a grant for water-supply or grants of contributions for construction or maintenance of water-works within municipal areas. As a matter of fact, several grants for water-supply within municipal areas have been made, and they are appreciatively referred to in the Government Resolution on the working of the District Boards. I think, Sir, that the diversion of money derived from rural areas and from a rural population to purposes which will tend to ameliorate the sanitary condition of the people residing within the town is wrong in principle. Your Honour will also be pleased to remember that there is no provision in the Municipal Act, by which a municipality can reciprocate in a similar generous manner for the benefit of the rural areas. It is notorious that the water-supply in areas within the jurisdiction of the District Board is inefficient; there is also some apathy on the part of District Boards to improve the water-supply and strictures have been passed on them in the Government Resolution on the working of District Boards. In recent times, the tendency to make such grants for the improvement of water-works or the construction of water-works within municipal areas has been very much in evidence, and I think it is becoming a growing tendency. I shall remind Your Honour of what has been said in the Bengal Administration Report of 1906, with regard to water-supply:—

The total expenditure increased by Rs. 29,976, or by about 28 *per cent.*, but the increase occurred wholly in the Presidency and Burdwan Divisions, where the expenditure was almost doubled; in the rest of the Province, there was a decline in expenditure. The District Boards of Champaran, Muzaffarpur, Darbhanga and Palamau incurred no expenditure under this head; while in Howrah, out of the budget provision of Rs. 3,000, only Rs. 678 were spent against Rs. 464 spent in the previous year out of the similar budget provision. In the Presidency Division, the expenditure increased by Rs. 21,839. In Nadia, 21 wells were completed and 12 more taken in hand, while Rs. 1,099 were spent as interest on loans taken under the Land Improvement Act. In Jessor, 28 tanks were excavated at a cost of Rs. 14,014, and 5 wells were made. In Khulna, seven tanks were completed, work to the amount of Rs. 9,628 done on eight others, and 20 tanks were taken up under the grants-in-aid system at a cost of Rs. 7,349. In Gaya, the District Board made a grant of one lakh of rupees to the Gaya Municipality towards the water-works scheme, and in Monghyr the District Board paid during the year a second instalment of Rs. 10,000 out of the promised contribution of Rs. 30,000, towards the Victoria Water-Works in the town of Monghyr. Out of a total allotment of Rs. 1,500 made by the Sambalpur District Council under this head to the two tahsils, only Rs. 450 were brought to account.

"It is well-known, Sir, that whenever any scheme for water-supply is conceived in respect of any Municipal town, there is always a very keen scramble for the collection of money to pay the capital expenditure. We all know that it is only by the imposition of the highest water-tax under the law that the bare cost of maintenance can be met. On these occasions it is usual to approach the Government to make generous grants; and also local munificence is appealed to. The response is not always equal to expectations cherished. When some amount is secured there is always a scramble to get more, and the only possible source they can look to is the District Board. The District Magistrate, naturally, and if I may be permitted to say so, very properly, takes a keen interest whenever any scheme for water-supply within

municipal areas is brought forward. He naturally would have an inclination to see that a portion of the District Fund, devoted to that purpose. It is also a notorious fact that most of the influential Members of District Boards, who are residents within municipal areas, are personally interested in having a water-supply in the place where they reside. It is, therefore, not at all difficult to get a resolution passed by a District Board such as it is constituted, to apply, and, without meaning any disrespect,—I say misapply, the money of the District Fund for promoting the sanitary welfare of towns, especially district towns. I think, Sir, Your Honour will set your face against such a diversion of money of the District Boards, whose wants are daily growing, but the growth of whose resources are not keeping pace with the numerous works they are entrusted with.

"With these words, I beg to move that this clause be omitted. I understand that by the omission of this clause it would not be possible for the District Boards to spend any money for a purpose like this. I am not quite sure if the Boards can legally spend any money of their own for the purpose of water-works in towns even if section 88A be omitted. It is only for that reason and apprehending that District Boards will spend money for water-works in towns as they have hitherto done, even if section 88A be omitted, that I have proposed an alternative amendment."

The Hon'ble BABU JOGENDRA CHANDRA GHOSE said:—"I have much pleasure in seconding the amendment so ably moved by my friend, the Hon'ble Rai Kishori Lal Goswami, Bahadur. I understand that amendments to this effect stood in the name of several Members when the first Report of the Select Committee was presented. It is well-known that the resources of many of the important districts in these provinces have been very much crippled by the inclusion of the water-works into the accounts. I do not agree that water works are outside the scope of beneficent works of District Boards, because a very large proportion of the population of the district live there and have to go there. The unhealthiness of a district is a matter of serious importance to the people. But while conceding that the District Board might continue the maintenance of water-works from District accounts, it must not be forgotten that the resources in command of District Boards are so limited that they could ill-afford to make any such contributions. I believe that the Government will in future help in the construction of water-works and their maintenance as generously as Your Honour has done during Your Honour's tenure of office, and I hope that the District Boards will not continue to provide anything out of their scanty resources for the construction and maintenance of water-works."

The Hon'ble BABU RADHA CHARAN PAL said:—"In connexion with this amendment, I regret that I cannot support my hon'ble friend, Rai Kishori Lal Goswami, Bahadur, although in this matter I find that my hon'ble friend on my right has enthusiastically supported it. Sir, I have followed with great interest the arguments adduced by my hon'ble friend, Rai Kishori Lal Goswami and his supporter, my hon'ble friend, Babu Jogendra Chandra Ghose. Both contend that the District Boards are not in a position to contribute to the maintenance of water-works, wells or tanks in the Districts; but the question is this, if they are not in a position to contribute, who asked them to do so? The Bill, as drafted, clearly gives the District Board discretionary power: if they are able to contribute they will do so, with the consent of the majority of the Members of the District Boards; and even then their hands are fettered. It is only with the sanction of the Local Government that they can contribute: so my hon'ble friend will see that it is not compulsory on the part of District Boards to contribute for the maintenance of water-works in the District. It is said that the District Magistrate naturally takes great interest in the Municipality and he is the President of the District Board. It is just and proper that he should. The District Boards are comparatively rich bodies and the Municipalities poor bodies, and therefore it is only right that the District Magistrate who looks to the well being of his own District would try to help the Municipalities. Then, Sir, we are well aware that the Municipalities, generally

speaking—not even excepting the Calcutta Municipality—have to strain their utmost to carry out the various requirements of the Act. Even so rich a Municipality, as the Calcutta Municipality, has not sufficient funds to carry into completion the various necessary works for the sanitation of the town, and when the Council is discussing the Budget then I shall perhaps ask for funds for the Calcutta Municipality. While we are thankful to many philanthropic gentlemen for their munificence, I fail to understand why we should not avail ourselves of the resources of District Funds when they are in a position to contribute towards beneficent works which will benefit the whole district.

“Under these circumstances, I do not think that this section ought to be deleted from the Bill, but it should be retained.”

The Hon’ble BABU GAJADHAR PRASAD said:—“I think it is my duty to bring to Your Honour’s notice that I have served on the Municipality and the District Board of Patna for about 25 years, and I still belong to both these bodies, and my experience, judging from the Patna district, is that District Boards are always solvent and Municipalities are always in want of money. Residents of districts are interested in the sanitation of their head-quarters. Your Honour is aware that zamindars and raiyats have frequently to attend Courts and have to attend to other business at head-quarters. Then, the members of District Boards and members of other associations have often to go to head-quarters. It is, therefore, in their interests to see that the town or head-quarter is in a sanitary condition. Your Honour is aware that epidemics are more prevalent in towns than in villages, and I think therefore that District Boards should always be allowed to contribute towards the sanitation of the towns. There is the safeguard and it is a very proper safeguard, that the sanction of the Lieutenant-Governor is necessary for this purpose. The Government will not allow District Boards to contribute when they themselves are in want.”

The Hon’ble BABU KALI PADA GHOSH said:—“I wish very much to say that all District Boards are not like the Patna District Board, of which my friend is the President. I unfortunately come from a part of the country where District Boards have always been found to have insufficient funds to meet the cost of works, which legitimately fall within the scope of the Boards. Sir, in this Council we have, during Budget discussions, dealt with sanitation in rural areas, especially as regards water-works which are very much neglected, or rather the District Boards find it impossible to carry out that work in the manner they would like. When we remember this, I cannot certainly go against the amendment moved by my hon’ble friend, Rai Kishori Lal Goswami, Bahadur, and I think that the District Board should be confined to the very necessary purposes for which the fund was created, although I do not go so far as to say that any contributions made by the District Boards to any water-works in municipal areas is a mis-application of that fund. Certainly I say, regard being had to the interest of rural areas, a contribution is unnecessary. A Municipal Board can very well take care of the areas in its charge, and District Boards should primarily hold all its funds for all works which are in the legitimate scope of that Board. My friend, the Hon’ble Babu Radha Charan Pal, has pointed out one fact, that section 88A does not make it compulsory on the District Board to make a contribution and, to safeguard this, section 88A will be allowed to stand in the Bill. District Boards will too frequently be led to the belief that this provision has been specially enacted that District Funds should be applied to the work contemplated by section 88A. I do not agree, therefore, with my hon’ble friend, Babu Radha Charan Pal, that section 88A should be allowed to stand. So I certainly support the amendment moved by the Hon’ble Rai Kishori Lal Goswami, Bahadur.

The Hon’ble MR. OLDHAM said:—“Government cannot accept this amendment. The Hon’ble Rai Bahadur Kishori Lal Goswami has said that he cannot understand why this provision should have been inserted. I can explain this to him. Clause 42 (now 44) was inserted in this Bill in its earlier stages, with the

object of legalizing contributions from the District Fund towards the improvement of the water-supply in municipalities situated within the district. The legality of such a contribution formed the subject of discussion in 1893, when a contribution was made for such a purpose by the District Board of Shahabad to the Municipality of Arrah. The Legal Remembrancer at the time gave his opinion that such a contribution was legal; but it seemed to Government that this opinion might at any time be called in question, in view of the declaration in section 1 that the Act shall not extend to any place or town to which the provisions of the Bengal Municipal Act have been extended. The object is clearly one to which a portion of the District Fund may very properly be devoted, since a pure water-supply in a municipality is a benefit to the district generally, and an outbreak of infectious disease caused by an impure water-supply within a municipal area may result in the spread of the disease to all parts of the district. It has been provided, as a safeguard, that any such contribution shall be subject to the sanction of the Lieutenant-Governor.

"The Hon'ble Member who has moved this amendment has read out certain figures in the cases of Gaya and Moughyr, comparing the amounts contributed towards the water-works with the amounts spent on original works. He has forgotten to point out that one class of expenditure is recurring, and one non-recurring.

"The Hon'ble Babu Jogendra Chandra Ghose has said that he knows that many Boards have been crippled by contributing to the establishment of water-works. He has carefully avoided mentioning the name of any such District Board. I do not know to which Boards he refers. I am not aware of any such case. Both these gentlemen have spoken as if District Boards would be compelled to make such contributions; but as the Hon'ble Babu Radha Charan Pal has pointed out, it is entirely optional with them to do so.

"In fact I am astonished, Sir, that a merely permissive provision of this nature should have given rise to the remarks that have fallen from some of the Members to-day.

"The Hon'ble Babu Kali Pada Ghosh assumes that rural areas will be neglected for urban areas; but I would point out to the Hon'ble Member that we are specially providing elsewhere in this very Bill for the improvement of water-supply in rural areas."

The motion was then put and lost.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, also moved that the following proviso be added to section 88A, in clause 42 (now 44) of the Bill:—

Provided that no application for such sanction shall be made unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted.

He said:—"I have already referred to the personal composition of District Boards which is peculiarly favourable to making grants for water-supply within rural areas. It would be very desirable in making this permissive section, as the Hon'ble Member in charge of the Bill has said, to safeguard in such a way that really the permission emanates from those interested vitally in the welfare of the district, and with the sufferance of a considerable majority of the members of the District Board. I have proposed this additional safeguard that there should be a majority of two-thirds to authorize a grant for water-supply, and I think this would be considered as very reasonable. My hon'ble friend, Babu Gajadhar Prasad, has remarked that he has a long-standing connection with both the District Boards and the Municipality. I think my friend, like another individual in a more critical condition, created by the imagination of the poet, finds himself faced by a divided duty when he has got to consider the interests both of the District Board and the Municipality.

It is not often that we hear of a District Board in affluent circumstances. I think we hear the contrary story very often. From the passage I have just read from the Administration Report, it will be quite clear that the Government has been year after year putting spur on the District Boards to spend considerably bigger amounts for water-supply in rural areas, and the Government regrets that more is not spent. Surely, the agency for the judicious use of money for the water-supply has been settled in this Bill by investing Union Committees with power to deal with sanitary conditions in their areas, and I hope there will be a larger demand when the Union Committees' work is properly defined, as it is hoped it will be under the new law. I think, Sir, what I have said will show that the safeguard I have proposed is eminently necessary to prevent an injudicious diversion of money from sanitary purposes within rural areas."

The Hon'ble BABU JOGENDRA CHANDRA GHOSH said:—"I beg to second the amendment just moved by my friend, the Hon'ble Rai Kishori Lal Goswami, Bahadur. You have heard that the new section has been introduced in order to avoid all objections as to the legality of making provision for water-works. It is no good now referring to that matter again because it has been passed. The question now is, should we put some safeguard against the improper use of the District Board Funds for the purpose of the construction and maintenance of water-works? It is said that it is a permissive section. The money can only be spent by the District Boards themselves. I do not agree with my hon'ble friend, Rai Kishori Lal Goswami, Bahadur, that District Boards are not independent bodies and that the District Officers often exercise undue influence over them. On the contrary, I think District Magistrates would stand between them and the people of the district when occasion arises. But the mischief is not there, the mischief is that most of the members of District Boards reside in the district towns, and as we are all human beings we cannot forget our own individual convenience and safety, forgetting the convenience and health of the poor unfortunate population of the district who do not reside there. For the safety of the great agricultural population of this country, who are not represented on the District Boards, this safeguard is absolutely necessary. It is not right to say that because this is a permissive section no amendment is necessary. Everything would have been right if the great mass of the population were represented.

"It is the town population mostly that forms the District Boards. I have said that they are independent and they have shown this on occasions, but they are human beings. As regards the objections of my learned friend, the Hon'ble Babu Radha Charan Pal, who said he wanted money for the Calcutta Municipality, I think it would have been better if he had not mentioned that.

"Your Honour, the Hon'ble Babu Kali Pada Ghosh and myself, who represent the District Boards, are in favour of this amendment. As regards the gentlemen who represent the Municipalities, I place the Hon'ble Babu Gajadhar Prasad in the category of a person who has the interest of the Municipalities more at heart than the interest of the District Boards he represents. He is very anxious, as we all know, to have the water-works at Bankipore; therefore his advice on this occasion cannot be called very disinterested."

The Hon'ble THE PRESIDENT here intimated that the Government were prepared to accept the amendment.

The Hon'ble BABU JOGENDRA CHANDRA GHOSH remarked:—"As the Government is going to accept the amendment, I need say no more."

The Hon'ble MR. OLDHAM said:—"I wish to say, Sir, on behalf of Government, that I am prepared to accept this amendment, provided that the words 'total number of the' be inserted before the word 'members' in the last line of the proposed amendment."

The amendment was then put in the following form, namely:—

Provided that no application for such sanction shall be made unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the total number of members of the District Board have voted.

The Hon'ble THE PRESIDENT declared the motion carried.

The Hon'ble RAI KISHORI LAL Goswami, BARADUR, also moved—

- (1) that in the second paragraph of sub-section (1) of section 118B, in clause 53 (now 55), of the Bill, the word "houses" be substituted for the word "property"; and
- (2) that the following be added to sub-section (1) of the said section 118B, in clause 53 (now 55) of the Bill, namely:—

Explanation.—'Houses' include huts, shops, granaries and warehouses and buildings of all other kinds.

He said:—"The reason why I propose this change is that I understood the object and scope of these special provisions for special taxation to be that the tax should be limited only to the actual residents of the hamlet for whose sanitary improvement this money is to be spent. The present wording of the Bill unduly widens the basis for taxation, including amongst the assessee persons who are only remotely interested in the sanitary work to be done there. The first victim will be all the zamindars who have got lands within the Union and who will come under the operation of this Act. They already pay a tax for the improvement of the sanitation of the place, and there should not be a further impost levied from them in the guise of a special taxation. The members of the Union Committees will be mostly the agriculturists, and they would very much prefer that the zamindars are made to pay for sanitary works to be done in accordance with the special provision laid down in the Bill. The next class of people who will also suffer and who ought not to suffer on account of this Act will be those cultivators who live outside the limits of the Union; but who hold lands for cultivation. I think, Sir, this tax ought to be confined to persons who actually own or occupy houses within the limits where special sanitary works are to be done. This portion of the bill professes to be modelled on the Village Chaukidari Act and the Chota Nagpur Rural Police Act, under which a tax is levied for the protection of the life and property of people residing in villages. Section 7 of the Chota Nagpur Rural Police Act says:—

All owners or occupiers of houses in any village, and every zamindar or under-tenure-holder who has a bhandar or cutchery for the collection of rent within the village shall be liable to assessment for the purposes of the Act.

"In the Village Chaukidari Act, section 14, says:—

'All owners or occupiers of houses in any village, and any person who has within such village a cutchery for collecting rents, shall be liable to assessment for the purposes of this Act.'

"I think, Sir, this provision of the Bill ought to run on the same lines and the assessment should be restricted to the owners or occupiers of houses which will, according to the definition hereafter given, include cutgeries of the zamindars."

The Hon'ble MR. OLDHAM said:—"I cannot advise the Council to accept this amendment. There is no sound reason in my opinion why the assessment should be confined to owners or occupiers of houses within the Union. It is presumed that the Hon'ble Member has chiefly in mind the case of absentee landlords, and that he wishes that they should escape assessment if they have no house within the Union. I cannot accept this view; and I am supported in this by the opinion of others, several of whom are themselves landed proprietors. The new provisions in regard to Union Committees empower such Committees to take measures in respect of tanks, wells and water-courses as

well as houses. If a Union Committee re-excavate, enlarge, deepen or otherwise improve a tank, or repair or deepen a well or water-course, benefit will accrue to the owner. It is obvious that the owner of such property should be liable to contribute towards the cost of such improvement, equally with persons who own or occupy houses within the Union. It is conceivable, on the other hand, that a person who merely owns some land within the limits of the Union may not benefit in any way from works carried out with the object of improving the sanitary conditions of a village. It may be argued that such persons should not be liable to assessment. On the other hand, all persons assessed under the section have the right of appeal (under section 118C) to the District Board, if they consider they have been unjustly or improperly assessed; and if dissatisfied with the decision of the District Board in the matter, they can move the Divisional Commissioner to exercise his power of revision. Looking, however, to the fact that the new provisions are principally directed towards the sanitary improvement of villages, I would be prepared to accept the following proposal:—

That in section 118B (1), in clause 53 (now 55) of the Bill, for the words 'the owners or occupiers of property' the following be substituted, *vis.*, 'the owners of buildings, tanks, wells or water-courses, or the occupiers of buildings.'

"The term 'building' is preferable to 'house' for obvious reasons."

There being no opposition, the Hon'ble the President declared the amended motion carried.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI, by leave of the Council, withdrew the following motions, of which he had given notice, namely:—

(1) that after proviso (1) to section 86A, in clause 41 (now 43) of the Bill, the following be inserted, namely:—

(2) Provided always that when, owing to the construction of a bridge, there is any loss to the owner of a private ferry, such loss will be compensated out of the proceeds of the toll-bar, or out of the funds of the District Board when no tolls are levied.

(2) that in line 9 of section 118B, in clause 53 (now 55) of the Bill, the word "houses" be substituted for the word "property."

The Hon'ble BABU DEBA PRASAD SARBADHIKARI also moved that in proviso (c) to sub-section (2) of section 118B, in clause 53 (now 55) of the Bill, for the word "seven" the word "four" be substituted.

This amendment being opposed by the Hon'ble Mr. Oldham, the Hon'ble Babu Deba Prasad Sarbadhikari moved that the word "five" be substituted for the word "seven" in the same proviso.

The Hon'ble Mr. OLDHAM having accepted this amendment, the Hon'ble the President declared it carried.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI also moved that after clause 29A (now 32) of the Bill, the following be inserted, namely:—

29B. After section 60 of the said Act the following shall be inserted, namely:—

'60A. A District Board may form, as occasion may require, permanent or temporary committees in a village or group of villages for carrying out general or specific works of sanitation, such as the digging of wells and tanks, the cutting of jungles and the draining of marshy places, &c.'

He said:—"This, Sir, is purely a permissive section, and ought not to meet with any opposition. The reason why I have thought it necessary to make a permissive provision like this is this: It is conceivable that works outside the scope of individual Unions and which would take up more of the District Board's time than it would care to bestow on them would be neglected. The Unions will no doubt do good work, but their number is not very large; and even if their number be considerably enlarged, their constitution will be more

or less formal and confined to their own units. The Unions will not be able to take up work not strictly within their jurisdiction. I, therefore, propose that District Boards—if it is found necessary to do so—should have power to appoint Committees able to take up work outside the purview of Village Unions. These Committees, if appointed, will be able to give time and energy for the proper carrying out of works which the Board would not be able to attend to.

"It is really not a new thing. My hon'ble friend, Babu Jogendra Nath Mookerjee, who served previously on the Council, raised this question and pointed out that it was desirable to have organisations like those which I suggest to carry on special work. The Village Unions themselves are not able to do it, and the District Boards themselves are not able to attend to it. Under these circumstances it seems to me that it is desirable to have some organizations of the kind suggested, and if the proposal is accepted, an agency may be provided which will be able to do good work."

The Hon'ble BABU GAJADHAR PRASAD said:—"I second the amendment, and my experience as Chairman of a District Board is that in villages the digging of wells and tanks are generally entrusted to people of a village and a headman, but of course they are not recognized as a Sub-Committee. They do the work and it is afterwards passed. I think we should be better provided for in the Act."

The Hon'ble MR. OLDHAM said:—"It is for such purposes as those mentioned by the Hon'ble Member that Union Committees may be appointed under the Act; and it is more especially to enable the Union Committees better to carry out such measures that the new provisions extending their powers and responsibilities have been inserted in the present Bill. On the other hand, it might lead to serious difficulty if two authorities were established with concurrent jurisdiction in the same area. The existing provisions in the Bill appear to me to fully provide for the case. If such work did not come within the scope of a Union Committee, the District Board have themselves sufficient power under the law as it stands. I think this amendment should, therefore, be rejected."

The motion was then put and lost.

The Hon'ble Mr. Oldham moved that for clause 19 (now 21) of the Bill, the following be substituted, namely:—

19. In the proviso to section 36 of the said Act, for the words 'the Local Board to which the Union Committee creating such appointment is subordinate,' the words 'the District Board' shall be substituted.

He said:—"This amendment is necessitated by the terms of section 119, sub-section (1), which provides that the District Board may, with the sanction of the Commissioner, direct that any specified Union Committee shall act as the agent of, and shall be subject to the control of, a Local Board, instead of the District Board, either for all purposes or for the purposes specified in the order; and sub-section (3) enacts that so long as an order made under sub-section (1) with respect to any Local Board continues in force, the reference to the District Board in the foregoing sections of the Act shall, so far as may be necessary, be read as if made to such Local Board."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that for clause 21 (now 23) of the Bill, the following be substituted, namely:—

21. In section 44 of the said Act, for the words 'the Local Board to which it is subordinate as hereinafter provided,' and for the words 'the Local Board,' the words 'the District Board' shall be substituted.

He said:—"This amendment similarly is consequential upon section 119."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that for clause 28 (now 30) of the Bill, the following be substituted, namely:—

28. In section 58 of the Bengal Local Self-Government Act of 1885, for the words 'the Local Board to which such Union Committee is subordinate,' the words 'the District Board' shall be substituted.

He said:—"The same explanation applies here."

The motion was put and agreed to.

The Hon'ble Mr. OLDHAM also moved that in clause 42 (now 44) of the Bill, for the words "the construction, repair and maintenance, under the provisions of the Bengal Municipal Act, 1884, of water-works, wells or tanks within the district," the following be substituted, namely:—

(a) the construction, repair and maintenance, under the provisions of the Bengal Municipal Act, 1884, of water-works, wells or tanks within the district; or
 (b) taking measures under the said Act for the prevention of plague in the district.

He said:—"Clause 42 (now 44) of the Bill, as already explained, empowers District Boards, with the sanction of the Lieutenant-Governor, to contribute towards the cost of the construction, repair and maintenance, under the provisions of the Bengal Municipal Act, of water-works, wells or tanks within the district. Such contributions have been made in the past, and it has been decided to specifically provide for them. There is another kind of contribution which has also been made in the past, and for which it is doubtful whether the Act provides at present. Since the advent of plague to this Province, Municipal authorities have in many cases exhausted their resources in taking measures against this scourge; and District Boards have, in several instances, come to their help. A question has recently been raised as to whether the Act authorizes such contributions. Plague usually breaks out first in the larger municipalities, and spreads thence into the farther parts of the district. It is manifestly in the interests of the district as a whole that prompt measures should be taken to prevent or to stamp out, when they occur, such outbreaks; and it is only right, therefore, that District Boards should have power to assist in case of emergency in such measures. It has been thought advisable to take the present opportunity of making this clear."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that after sub-section (1) of section 91, in clause 42A (now 45) of the Bill, the following be inserted, namely:—

(1a) The Civil Surgeon of the district shall be a member *ex-officio* of the Sanitation Committee of his district.

He said:—"Section 91 enacts that every District Board shall appoint, to be members of Sanitation Committees, not more than five nor less than three members of the Board. It is very important that the Civil Surgeon of the district should always be a member of this Committee, and it has been thought necessary to provide definitely for this in the Act."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that after sub-section (1) of section 118B, in clause 53 (now 55) of the Bill, the following be inserted, namely:—

(1a) The Union Committee shall appoint one of their number to receive and collect the said assessment, and to grant receipts for the same, and to keep the accounts thereof; and may permit the person so appointed to retain any sum, not exceeding five *per cent.* of the amount collected by him, to repay the costs of such collection.

He said:—"Section 22 of the Village Chaukidari Act, 1870, provides that every panchayat shall appoint one of their number to receive and collect the rate, and to keep the accounts thereof. There is no similar provision, however, in the Chota Nagpur Rural Police Act. As section 118B will apply to districts in which the Chota Nagpur Rural Police Act is in force, as well as to districts

in which the Village Chaukidari Act is in force, it has been decided to insert a general provision of the nature indicated in this amendment."

The Hon'ble BABU JOGENDRA CHANDRA GHOSE, by way of amendment, proposed that the words "or any other person" be inserted after the words "one of their number" in the above amendment.

The Hon'ble MR. OLDHAM having accepted this, the motion was put in the amended form and agreed to.

The Hon'ble MR. OLDHAM also moved that in sub-section (2) of section 118B, in clause 53 (now 55) of the Bill, for the figures "15 to 20, 22, 25 to 34, 47 and 63," the figures "15 to 19, 25 to 29, 31 to 34, 46A, 46B and 63" be substituted.

He said:— "A careful scrutiny of the two Acts in question has disclosed the necessity of slight alteration in the section in respect of the sections of the Village Chaukidari Act, 1870, to be applied."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that in the same sub-section, for the figures "8 to 11, 13, 15 to 21, 34 and 56," the figures "9, 10, 13, 15 to 18, 20, 21, 34 and 36" be substituted.

He said:— "The same remarks apply in this case".

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that after proviso (a) to section 118B (2), in clause 53 (now 55) of the Bill, the following be inserted, namely:—

(aa) the references in section 46B of the said Village Chaukidari Act, 1870, to the chaukidari assessment shall be construed as references to the assessment imposed under this section.

He said:— "This is a consequential amendment".

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that proviso (e) to sub-section (2) of section 118B, in clause 53 (now 55) of the Bill, be omitted.

He said:— "This is also a consequential amendment".

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that in sub-clause (99), in clause 59 (now 60) of the Bill, for the figures "118A," the figures "118B" be substituted.

He said:— "It will be clear to the Hon'ble Members that section 118B should also be included under sub-section (99) of section 138".

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that clause 36 of the Bill be omitted.

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also, with the permission of the President, moved that to clause 26 (3) (now 27 (4), of the Bill, the following be added, namely:—

and

(d) of the expenses of any of the poorer inhabitants of the district for journeys to and from any hospital established in any part of British India for the treatment of special diseases.

He said:— "Clause 36 of the Bill empowers a District Board, with the approval of the Commissioner, to defray the expenses of poorer inhabitants of

the district for journeys to and from any hospital established in any part of British India for the treatment of special diseases. This clause was inserted chiefly with the object of extending to servants of District Boards and poor inhabitants of the district the concessions granted by the Government of India as to the treatment of Government servants at the Pasteur Institute at Kasauli. It has been pointed out, however, that the effect of the clause as it stands would be that the power given by it would have to be exercised by the members of the District Board in meeting, and the approval of the Commissioner then obtained. Obviously this procedure might involve delay of perhaps a month. In the case of a person bitten by an animal suffering from rabies, immediate action for his despatch to Kasauli should be taken. It is advisable, therefore, that a quicker procedure should be provided. This object will be attained by inserting the provision about the payment of such expenses in clause 26 (3) (now 27 (4), of the Bill, that is, under section 53 of the Act."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also, with the permission of the President, moved that in sub-clause (iii) of section 118C, in clause 53 (now 55) of the Bill, for the word "holding" the word "property" be substituted.

He said:—"As Hon'ble Members will observe, this is merely a question of drafting."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also, with the permission of the President moved that in sub-clause (o1), in clause 59 (9) now 60 (10), of the Bill, for the words "famine-relief," the words "the relief of famine, serious distress or scarcity" be substituted.

He said:—"This amendment is necessitated by the amendment made in section 99 and the terms of the new section 99 (a)."

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that clause 5A (now 6) of the Bill be numbered 6, and that all necessary changes be made in the numbering of the remaining clauses and sub-clauses.

The motion was put and agreed to.

The Hon'ble MR. OLDHAM then moved that the Bill, as settled in Council, be passed.

The Hon'ble BABU JOGENDRA CHANDRA GHOSH said:—"It gives me great pleasure to find that this great and beneficent measure, inaugurated by Your Honour, is going to be made law to-day. The diversion of the road-cess to purposes other than those for which it was originally imposed was a standing grievance of the people. It remained for you to remedy it and the people ought to be grateful to you for it. I need not take up the time of the Council by recapitulating the history of the road-cess and the difficulties of the District Boards and by showing the magnitude of the service rendered by Your Honour. It is known to all and appreciated even by the papers which see nothing good in British rule. Your Honour has also earned the gratitude of the people by listening to the objection raised in my note of dissent to the first Report of the Select Committee, embodying the opinion of many of the non-official Members and expunging the provision about the imposition of the railway cess. Now I have to speak of a matter of supreme importance to the people under your charge, namely, the new provision about making sanitary improvements in the rural areas. The growing unhealthiness of the districts of Bengal is just now the greatest danger to the people and a matter deserving of the most serious consideration at the hands of the Government.

"Whatever might be said against the Government and its Officers, it would be very ungrateful indeed not to acknowledge what has been done by them for the education of the people, medical help to them and the prevention of epidemics and the improvement of sanitation in this country—matters to which

all past Governments were all but indifferent and impotent on account of ignorance and prejudice. Indeed, our ideas of the education of the masses, and the necessity of adopting measures according to sanitary science, and the like, are the outcome of European science and European democratic ideas. British officials may be haughty, and I for one would like to keep aloof from them whenever possible; but I know that there is not one among them who does not feel that he is here for the amelioration of the condition of the people under his charge. The defects of the British Rule are many, but to say that it has been the cause of famines, plagues and malaria would not be correct and be rather ungrateful, and the person who, knowing it, does not say so, helps in the propagation of untruth.

"Your Honour has once again vindicated the character of the British Governor for his earnest solicitude for the welfare of the people under his charge, by the introduction of the new provisions about sanitation. Your Honour has supplied self-governing bodies with limited powers of taxation for carrying out sanitary improvements. I am thankful to the Select Committee for accepting the safeguards against improper taxation, which I thought would take away all objections to it.

"The Select Committee have provided that the rates can be imposed by the people's representations when two-thirds of them agree to it; then again a moderate limit has been placed on the power of taxation. But I cannot but give expression to my apprehension that the means at the command of the District Boards and Union Committees would be quite insufficient to meet the necessities of the case. The ear-marking of the road-cess will also handicap the District Boards in many matters and probably in the matter of education. Indeed, though much has been done, very much more ought to be done, and people who have received Western education are greatly dissatisfied because they find that, as compared with other civilized countries, so little is done in this country, and they hold the Government responsible for the general ignorance and comparative poverty of the people and also for the many thousands of preventable deaths. It is, however, easy to criticize, but very difficult to do. However, the passing of the present measure is not enough, unless the Government will rise to the occasion and find money for very much larger grants for education and sanitation. My only regret on the present occasion is that Your Honour has been unable to raise the proportion of the elected Members of District Boards as you intended to do. But I believe that a larger measure of self-government will soon be granted, and we need not be impatient. In conclusion, I must say that I would be failing in my duty as a representative of the District Boards if I do not give expression to my gratitude to Your Honour for this great measure of far-reaching beneficence."

The motion was then put and agreed to.

The Council was then adjourned to Saturday, the 5th September, 1908.

CALCUTTA;

The 25th August, 1908.

F. G. WIGLEY,

Secretary to the Bengal Council,



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 9, 1908.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met in the Council Chamber on Saturday, the 5th September, 1908, at 11 A.M.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, presiding.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. F. W. DUKE.

The Hon'ble MR. W. A. INGLIS, C.S.I.

The Hon'ble MR. H. C. STRICKFIELD.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble SIR CHARLES ALLEN, Kt.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. W. H. H. VINCENT.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE, M.A., B.L.

The Hon'ble IHTISHAM-UL-MULK RAIS-UD-DOWLA AMIR-UL-OMRAH NAWAB ASEF KUDR SYUD WASIF ALI MEERZA KHAN BAHADUR MAHABUT JUNG, Nawab Bahadur of Murshidabad.

The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, M.A., B.L.

The Hon'ble MAHARAJADHIRAJA BIJAY CHAND MAHTAB BAHADUR, OF BURDWAN.

The Hon'ble BABU GAJADHAR PRASAD.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI, M.A., B.L.

The Hon'ble MR. F. A. LARMOUR.

The Hon'ble MR. W. BROWN.

The Hon'ble BABU RADHA CHARAN PAL.

QUESTIONS AND ANSWERS.

STATE TECHNICAL SCHOLARSHIPS.

The Hon'ble BABU RADHA CHARAN PAL said :—

In the Gazette of India of the 23rd January, 1904, in paragraph 6 of the Despatch No. 8, dated Simla, the 9th October, 1902, from the Government of India, Home Department, to His Majesty's Secretary of State for India, it is stated that "the Local Governments and Administrations will be required to bear in mind the importance of ensuring that the returned scholar shall find scope for his skill and ability * * * * * If the early results of the scheme are successful, we think that the services of the returned scholars are sure to be in good demand, and that, failing private employment, Government will be glad to turn their abilities to account as teachers in industrial schools or in other capacities connected with the improvement of local industries."

Will the Government be pleased to state whether any of the returned scholars have been taken into the Government service ?

In paragraph 3 of the same Despatch it is stated that "they proposed to give two (scholarships) to the Madras Presidency, two to the Bombay Presidency, two to Bengal and to distribute the remaining four among the other provinces."

Subsequently in paragraph 2 of the Government Notification published in the Statesman of the 20th March, 1908, it is stated that the Government of India have now decided to award during the year 1908 and the following years one scholarship annually to each province, * * *

Will the Government be pleased to state the cause of reduction in the number of scholarships from two to one ?

It is stated in the Government Notification (published in the Statesman of the 20th March, 1908) that "as far as Bengal was concerned, it was decided that the mining industry offered the most * * * * * favourable field, * * * * * and the scholarships hitherto awarded on the recommendation of the Government of Bengal have been utilized for the encouragement of that industry. Eleven State Technical scholars have been sent from Bengal in the four years, 1904 to 1907."

Will the Government be pleased to state how many of the said scholars have returned after completing their period of scholarships, with what qualifications, and how they have been employed ?

Since the institution of the said scholarships, rules under section 20 of the Indian Mines Act, 1901 (VIII of 1901), fixing qualifications for Mine Managers, were published in the Gazette of India, dated 21st April, 1906, and came into operation from 21st October, 1906.

Will the Government be pleased to state whether such rules have facilitated the employment of the scholars in any way ; if so, what steps have been taken to ensure the success of the scheme and to turn the ability of the returned scholars into practical utility ?

The Hon'ble MR. STREATFIELD replied :—

"Since 1904 ten scholars have gone to England, where seven are still pursuing their studies. One scholar threw up his work with the object of being called to the Bar. Two scholars have obtained the degree of B. Sc. in Mining. One has not yet reported his arrival in India to Government. The second returned to India last November and has lately applied to Government for employment. This is therefore the only case coming under Part I of the Hon'ble Member's question.

"The Government has been informed that this last gentleman failed to pass the recent examination held by the Mining Board under the rules made by the Government of India under section 20 of the Indian Mines Act, VIII of 1901. This result is surprisingly unsatisfactory and careful inquiry will be made into all the facts of the case. The Government is anxious to give all possible help to deserving scholars on their return to India, but it certainly does not propose to provide employment in all cases irrespective of merit. It is moreover eminently desirable that the services of returned scholars should be utilized as far as possible in private employment.

"There is no reason to doubt the value of the examination prescribed by the rules framed under section 20 of the Indian Mines Act. The object of this examination is not to facilitate the employment of scholars, but to prevent the employment as Mine Managers of persons who are not reasonably qualified for such employment. The examination is understood to be such as any mining scholar should pass without difficulty.

"Formerly two scholarships were awarded to each of the Governments of Madras, Bombay and Bengal, the remaining four being distributed among other Local Governments. The Government of India considered that this arrangement was unfair, as it did not give every province an opportunity of nominating a scholar every year. The ten scholarships have therefore been re-distributed and one scholarship has been made available annually for each province. There has been no reduction in the total number of scholarships. It has been decided that this re-distribution shall not prevent any Local Government from receiving more than one scholarship in any year if there is a dearth of eligible candidates in other provinces. Two scholars from this province have been accepted this year by the Government of India. One is to undergo a course of training in mining and the other in leather industries."

TECHNICAL SCHOLARSHIPS FOR MINING.

The Hon'ble BABU RADHA CHABAN PAL asked :—

Will the Government be pleased to state whether it is under contemplation in any Department of Government, or it has been recommended, to abolish the present system of Technical scholarships for Mining study on the ground that a course of Mining training has recently been introduced in the Civil Engineering College, Sibpur; whether the course of education in Mining training in the Sibpur College includes practical training in any up-to-date collieries; and whether the Sibpur College Laboratory has been well-equipped with up-to-date Mining Machinery, Experimental Mine, etc., Electrical Machinery, Metallurgical Laboratory with furnaces and Geological Laboratory necessary for Mining study similar to what are provided for in the University of Birmingham, where such Technical scholars are usually sent ?

The Hon'ble MR. STREATFIELD replied :—

"This Government is not aware of any proposal to abolish the present system of Technical Scholarships for mining. The Sibpur course includes a period of practical surveying in a mining district with actual underground work. The College has been well equipped, as far as is practicable and as far as funds permit; but it cannot pretend to an equipment equal to that of the Birmingham University."

OVERFLOW OF THE RIVER BODAL

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Has the attention of the Government been drawn to the condition of the ancient and populous villages of Hadal, Narayanpore and others situated within thana Vishnupore in the district of Bankura, which are every year under water on account of the overflow of the waters of the River Bodai and have become all but deserted in consequence ? Will the Government be pleased to inquire and to take steps to remedy this state of things ?

The Hon'ble MR. INGLIS replied:—

“The attention of Government has not been drawn to this matter, and there is no present information in respect to it. An inquiry will be made.”

BABU DURGA CHARAN SANAYAL'S CASE.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

(a) Has the attention of the Government been drawn to the observations of the Indian Daily News, the Empire, the Capital, and all the Indian papers of Bengal regarding the conviction and sentence of Babu Durga Charan Sanyal? Does the Government intend to take any steps in the matter?

(b) Has the attention of the Government been drawn to the observations in the judgment of the High Court in the above case describing the pitiable condition of the accused, an old pleader of over 60 years, who has lost many children and whose bereavements and disappointments in life have told seriously on his health and mind? Will the Government be pleased to remit his sentence on the above considerations?

(c) Will the Government be pleased to consider whether the said old prisoner should not be treated with kindness and not required to undergo hard labour as long as his matter is under consideration and also as long as he is in jail?

The Hon'ble MR. STREATFIELD replied:—

“The prisoner in question is being carefully observed, and his case is receiving due attention. As the offence for which he has been convicted was committed within the province of Eastern Bengal and Assam, this Government is not in a position to deal finally with the matter except in consultation with the Government of that province. It is impossible to express any opinion on this case at present.”

SCARCITY IN BIHAR.

The Hon'ble BABU GAJADHAR PRASAD asked:—

Is the Government aware that on account of drought, *bhadoi* crops in Bihar are almost destroyed and the prospects of paddy there are quite gloomy? If so, will it please the Government to take the necessary measures for the relief of the people of Bihar?

The Hon'ble MR. DUKE replied:—

“Government is aware that owing to failure of the rains the crop prospects are very gloomy in certain districts of Bihar. It is hoped that the situation has been improved in the south and west by recent heavy rain. The local officers have already been addressed with a view to action being taken as soon as it may become necessary. They have applied for *takavi* loans to be distributed as soon as rain makes the cultivation of the *rabi* crop possible and these have been arranged for.”

THE CHOTA NAGPUR TENANCY BILL, 1908.

The Hon'ble Mr. Vincent presented the Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur.

The Hon'ble Mr. Vincent also moved that the Bill, as amended by the Select Committee, be taken into consideration by the Council on the 19th instant.

The motion was put and agreed to.

THE BENGAL REPEALING BILL, 1908.

The Hon'ble Mr. Oldham moved for leave to introduce a Bill to repeal the Howrah and Suburban Municipal Police Act, 1884. He said:—

“The Howrah Municipality has been relieved by the Government of India of all liabilities formerly imposed on it on account of police charges, and the Suburban Municipality was abolished in the year 1888. It is unnecessary therefore to retain the Howrah and Suburban Municipal Police Act, 1884 (Bengal Act IV of 1884), on the Statute Book, and it is accordingly proposed to repeal it.”

The Hon'ble Mr. Oldham also introduced the Bill, and moved that it be read in Council.

The motion was put and agreed to, and the Secretary accordingly read the title of the Bill.

The Hon'ble Mr. Oldham also moved that the Bill be taken into consideration by the Council on the 19th instant.

The motion was put and agreed to.

The Council was then adjourned to Saturday, the 19th September, 1908.

CALCUTTA ; }
The 7th September, 1908. }

F. G. WIGLEY,
Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, SEPTEMBER 30, 1908.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

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The Council met in the Council Chamber on Saturday, the 19th September, 1908, at 11 A.M.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, presiding.
The Hon'ble Mr. R. T. GREER, C.S.I.
The Hon'ble Mr. S. P. SINHA, Advocate-General of Bengal.
The Hon'ble Mr. F. W. DUKE.
The Hon'ble Mr. W. A. INGLIS, C.S.I.
The Hon'ble Mr. H. C. STREATFIELD.
The Hon'ble Mr. C. E. A. W. OLDHAM.
The Hon'ble SIR CHARLES ALLEN, K.T.
The Hon'ble Mr. E. P. CHAPMAN.
The Hon'ble Mr. W. H. H. VINCENT.
The Hon'ble BABU JOGENDRA CHANDRA GHOSE, M.A., B.L.
The Hon'ble ILYISHAM-UL-MULK RAIS-UD-DOWLA AMIR-UL-OMRAH NAWAB ASEF KUDR SYUD WASIF ALI MEERZA KHAN BAHADUR MAHABUT JUNG, Nawab Bahadur of Murshidabad.
The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.
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The Hon'ble BABU GAJADHAR PRASAD.
The Hon'ble BABU DEBA PRASAD SARBADHAKARI, M.A., B.L.
The Hon'ble Mr. F. A. LARMOUR.
The Hon'ble Mr. W. BROWN.
The Hon'ble BABU RADHA CHARAN PAL.

QUESTIONS AND ANSWERS.

SIBPUR COLLEGE.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Will the Government be pleased to say what steps have been taken to give effect to its promise to establish classes in mining engineering, electrical engineering and mechanical engineering, imparting instruction to a standard equal to that of the technical colleges of Europe? Have the classes in the Sibpur College on the above subjects been affiliated with the Calcutta University for the purpose of granting degrees in them? When will the said graduate classes be opened?

The Hon'ble MR. STREATFIELD replied:—

“I refer the Hon'ble Member to what I said on this subject in the course of the last budget debate, which was as follows:—‘The Hon'ble Babu Jogendra Chandra Ghose has made a serious grievance of the delay in opening the graduate classes in Engineering at Sibpur. I find, however, that the University is not prepared to examine for these degrees till 1911, and as a two years' course is involved, it is useless and impracticable to start these classes till 1909. The first intermediate examination in Engineering will be held in 1909. This course was opened in 1907, and those who are now reading the course and who succeed in passing the examination in 1909 will be eligible to read the graduate course then and not before.’ That statement was and is correct.”

INDUSTRIAL CHEMISTRY.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Will the Government be pleased to say in what stage is the scheme for starting graduate classes in industrial chemistry?

The Hon'ble Mr. STREATFIELD replied:—

“The scheme for establishing classes in technological chemistry and the chemistry of dyeing at Sibpur is still under the consideration of the Government of India.”

WEAVING SCHOOL AT SERAMPORE.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Will the Government be pleased to say whether there is any likelihood of opening the Weaving School at Serampore in the near future? Is the Government in a position to say by what time at the latest the school will be started?

The Hon'ble MR STREATFIELD replied:—

“The appointment of a Principal for the Serampore Weaving School has been made. The gentleman selected is at present employed by a private firm in Bombay. It is hoped that he will join the appointment at once and that the school will be started within two months from the present date.”

SILK INDUSTRY.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Will the Government be pleased to say whether all the recommendations of the Silk Commission have been given effect to, and what steps are being taken for imparting instruction in improved methods of sericulture?

The Hon'ble MR. DUKE replied:—

“The remedial measures recommended by the Silk Committee appointed in June, 1906, were accepted by Government, except on two points. Conferences were held at Calcutta and Berhampur with the leading representatives of the Silk Industry and it was ultimately agreed that the control of the operations and the disbursement of the funds should rest with a Committee consisting of three representatives of European Silk Firms, one representative of the Indian Silk Firms, the Collector of Murshidabad and the Director of Agriculture (President). It was further decided that one large central nursery in addition to the small nurseries should be maintained. The Government of Eastern Bengal and Assam preferred to have a separate Superintendent of Sericulture, so that the operations are confined to this Province. The management of the Sericultural School at Rajshahi and the two nurseries there have been handed over; but the Government of Eastern Bengal and Assam have agreed to train six students from this Province every year.

“The members of the Committee were recently nominated and rules for their guidance published. Meanwhile, Rs. 22,000 had been provided in the budget and Babu Apurba Coomar Ghose has been appointed Sericultural Superintendent. Under his guidance, about 80 bighas of land have been planted with mulberry and the construction of the central nursery and four small nurseries at Berhampore has been undertaken. Other model rearing houses will be established as soon as the organization is complete and funds permit.

“Instruction in improved methods of Sericulture is given at Rajshahi and at Sabang in the district of Midnapore. As soon as it is possible to open more model rearing houses facilities for imparting instruction will be extended.”

AGRICULTURAL SCHOOLS.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Will the Government be pleased to consider the advisability of establishing comparatively inexpensive lower grade agricultural schools for training practical agriculturists, in which a high literary qualification for admission will not be required, as in the Central Provinces, one in each division or one in connection with each of the existing demonstration farms?

The Hon'ble MR. DUKE replied:—

“Until the Provincial Agricultural College at Sabaur can supply elementary teachers it does not seem advisable for the Government to start lower grade agricultural schools; but a class for the practical training of some of the cultivators, such as is in existence at Cuttack, will be opened at each of the Experiment Stations. For the Cuttack class no literary qualification is necessary beyond ability to read and write the vernacular.”

DRINKING-WATER IN RURAL AREAS.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Having regard to the answer given by the Government to a question on the subject which showed the extreme inadequacy of the amount spent in the districts of the Presidency Division during the last five years for the supply of good drinking water, and having regard also to the great water scarcity experienced during the hot season this year, will the Government be pleased to make a systematic effort by taking measures for the excavation of 20 or a sufficient number of good tanks every year in the interior of each of the districts of the said Division, through the District Boards, by making special grants for the purpose?

The Hon'ble Mr. OLDHAM replied:—

"In the answers given to Questions Nos. V and VI put by the Hon'ble Member at the meeting of this Council held on the 21st March last, the policy of this Government in respect of making grants for the supply of drinking water in rural areas was explained. No change has since been made in that policy. Under the extended powers given to them by the provisions of the Bill for the amendment of the Local Self-Government Act recently passed in this Council, Union Committees will be enabled to undertake measures of the nature referred to by the Hon'ble Member. Government will look to the people in the first instance to take action of their own accord when necessary under these provisions. It will be left to District Boards and Union Committees to initiate measures in the direction suggested. It is only thus that the Act recently passed will be justified."

VILLAGE SANITATION.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Having regard to the fact that the new provisions about sanitation by means of Union Committees will be infructuous on account of the very insufficient funds that can be raised by the said Committees, will the Government be pleased to consider the advisability of making an adequate grant for sanitary purposes to the said Committees?

The Hon'ble Mr. OLDHAM replied:—

"The provisions recently added in the Bill to amend the Local Self-Government Act have not yet come into operation. It is, therefore, premature to discuss whether the funds that it will be possible for the Union Committees to raise under those provisions will be insufficient for the purpose of measures of village sanitation."

CHARITABLE DISPENSARIES IN THE PRESIDENCY DIVISION.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked:—

Will the Government be pleased to furnish a statement showing the grants made by it and the amounts spent by the District Boards in each of the districts of the Presidency Division for affording medical help to the people living outside the district and sub-divisional towns? Will the Government be pleased to consider the advisability of establishing a larger number of charitable dispensaries than that which exists at present in the said districts?

The Hon'ble Mr. OLDHAM replied:—

"A statement has been prepared (marked A) showing the grants made by Government and the total expenditure in the case of each dispensary in the Presidency Division outside the district and sub-divisional towns during each of the last three years. Government has not got information to show what grants are made by each District Board to each dispensary and what amounts are received from other sources.

"From another statement (marked B), it will be seen that the Presidency Division is already much better off in respect of dispensaries than any of the other Divisions. It may be left to the local authorities to move for the establishment of other dispensaries as local conditions may demand."

A.

District.	NAME OF DISPENSARY.	Class.	GOVERNMENT CONTRIB- UTION.			TOTAL EXPENDITURE.		
			1906.	1906.	1907.	1906.	1906.	1907.
24-Parganas ...	Barisha ...	III	Re.	Rs.	Rs.	Rs.	Rs.	Rs.
	Khardaha	»	10	14	14	1,865	1,664	1,859
	Nawabganj	»	18	...	...	641	506	766
	Naibati ...	»	...	...	6	584	660	873
	Hajishahar	»	6	7	7	836	942	1,090
	Harinavi	»	339	324	201	1,544	2,172	1,361
	Baruipur	»	1	1	1	1,275	1,693	1,406
	Birati ...	»	12	12	12	831	881	827
	Garulia ...	»	7	407	7	1,028	1,021	1,064
	Chitpur ...	»	16	4	6	2,931	2,503	2,607
	Baduria ...	»	153	154	154	1,170	1,457	1,391
	Budge-Budge	»	22	1,000	16	2,302	1,487	1,433
	South Dum-Dum	»	16	18	18	1,153	1,146	1,160
	Manicktala	»	...	...	...	1,892	1,522	1,920
	Ultadanga	»	...	...	...	173	26	238
	Jainagar	»	100	100	...	861	1,062	904
	Garden Reach	»	...	...	24	1,232	1,266	1,364
	Canning Town	»	120	122	122	787	907	940
Nadia ...	Taki ...	»	10	10	98	1,187	2,187	1,978
	Tuntulia	»	435	629	663	1,741	1,435	2,345
	Magra Hât	»	1	51	7	1,046	1,076	1,418
	Helpukur	»	15	28	298	1,078	1,328	1,430
	Gossipore	IV	12,197	309	1,173	7,711	18,711	22,446
	Chetla	»	339	334	60	1,824	1,808	2,228
	Ula ...	III	19	16	18	796	1,193	681
	Santipur	»	46	25	269	1,525	1,509	2,426
Murshidabad ...	Kumarkhali	»	16	...	12	587	603	505
	Chakdaha	»	22	217	15	1,140	705	1,149
	Navadwip	»	...	32	185	1,573	1,855	1,823
	Debagram	»	15	14	16	857	803	979
	Shikarpore	»	19	16	29	709	884	882
Murshidabad ...	Asimganj	»	513	266	22	2,818	2,361	6,336

District.	NAME OF DISPENSARY.	Class.	GOVERNMENT CONTRIBUTION.			TOTAL EXPENDITURE.		
			1905.	1906.	1907.	1905.	1906.	1907.
Jessore	Kotchandpur	III	Rs. 167	Rs. 190	Rs. 257	Rs. 1,632	Rs. 1,668	Rs. 1,931
	Maheshpur	—	12	27	19	797	745	783
	Sreedharpur	—	11	32	29	743	820	756
	Kesubpur	—	9	24	24	958	913	1,297
	Nohatta	IV	8	227	20	539	1,178	660
	Raigram	—	11	27	30	667	575	539
	Lohagara	—	14	46	41	1,160	1,029	970
	Kalia	—	—	20	20	—	555	630
	Sripur	—	—	—	20	—	—	659
	Kalaroa	III	10	9	10	893	1,908	978
Khulna	Tala	—	17	16	14	863	1,026	1,237
	Kaliganj	—	13	13	11	623	882	1,456
	Mollabat	—	18	11	10	717	797	1,163
	Chandkhali	—	80	180	180	1,479	1,068	930
	Nawapara	—	14	13	14	781	1,497	1,327
	Dumuria	—	14	13	14	872	1,110	1,051
	Rampal	—	—	7	9	—	2,488	866
	Shibbati	—	—	8	10	—	2,350	1,221
	Dacope	—	—	8	8	—	2,496	832
	Paikgacha	—	—	—	8	—	—	1,960
Bengal	Debhatta	—	—	—	9	—	—	1,787
	Senhati	—	—	—	8	—	—	2,061
	Char Beniam	—	—	—	8	—	—	1,361
	Daulatpur	IV	17	436	746	1,108	1,105	1,261

B.

Name of Division.	Total population.	Total area in square miles.	Total number of dispensaries.	Number of population to each dispensary (column 2 divided by column 4).	Number of square miles to each dispensary.	Number of dispensaries outside district and subdi- visional head- quarters.	
						1	2
Burdwan ...	... 8,240,076	13,949	56	147,144	249	39	
Presidency (including Calcutta).	8,993,028	14,964	94	95,670	169	56	
Patna ...	15,615,389	23,713	76	208,873	316	49	
Bhagalpur ...	8,091,405	19,776	55	147,116	359	36	
Oriasa ...	4,788,119	11,104	37	129,409	300	21	
Chota Nagpur ...	6,900,429	26,963	26	188,478	1,037	16	

CHARITABLE DISPENSARIES IN THE SUNDARBANS.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Will the Government be pleased to consider the advisability of establishing a few charitable dispensaries and of also appointing a few travelling Doctors during the cholera season in the Sundarbans, where there is practically little or no medical aid available?

The Hon'ble MR. OLDHAM replied :—

"To provide adequate medical relief in the Sundarbans tracts of the Khulna and 24-Parganas districts is an extremely difficult task, on account of the large area and the scattered population. The District Boards of Khulna and the 24-Parganas are alive to their responsibilities in the matter; and they have from time to time made special arrangements for dealing with cholera outbreaks. The former Board maintains four dispensaries in the south of the settled area; and the latter, three. The 24-Parganas District Board also maintains a floating dispensary in the Sundarbans tract, and proposes to establish another permanent dispensary on the edge of this tract.

"It seems to the Lieutenant-Governor desirable that another floating dispensary should be established for the Sundarbans tracts of the Khulna district; and Government will be prepared to make a contribution towards the cost thereof. The Commissioner of the Division is being addressed on the subject."

EXPENDITURE ON PRIMARY SCHOOLS.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Will the Government be pleased to furnish a statement showing the actual amount now spent by it annually on primary schools, without including in it the charges for inspection and direction, in each of the districts of the Presidency Division, and also the population of the said districts?

The Hon'ble MR. STREATFIELD replied :—

"A statement giving the information asked for by the Hon'ble Member is laid on the table."

Statement showing the amount spent from different Public funds during the last three years on Primary schools in each of the districts of the Presidency Division (excluding charges for Inspection and Direction), and also the population of the said districts.

Names of Districts.	Population.	AMOUNT SPENT IN 1905-06 FROM—				AMOUNT SPENT IN 1906-07 FROM—				AMOUNT SPENT IN 1907-08 FROM—				AVERAGE AMOUNT SPENT IN EACH OF THE LAST 3 YEARS.			
		Provincial Revenues.	District Funds.	Municipal Funds.	Total.	Provincial Revenues.	District Funds.	Municipal Funds.	Total.	Provincial Revenues.	District Funds.	Municipal Funds.	Total.	Provincial Revenues.	District Funds.	Municipal Funds.	Total.
3	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Calcutta ...	... 647,734	35,732	...	8,750	34,481	26,452	...	10,782	37,394	26,853	...	13,970	36,923	26,378	...	10,537	36,905
24-Parganas ...	... 2,978,346	20,910	32,160	16,177	78,235	23,525	30,365	10,702	70,306	25,145	32,178	10,680	68,912	16,197	23,896	10,523	70,615
Nadia ...	... 1,087,401	4,020	22,280	8,162	32,776	8,192	24,265	3,300	34,758	7,134	26,755	3,460	37,878	6,652	24,304	3,214	33,970
Murshidabad ...	... 1,835,184	2,901	17,105	3,073	25,079	4,763	17,869	3,162	24,754	5,893	18,462	2,987	26,611	4,982	17,792	2,184	34,746
Jessore ...	... 1,813,374	4,771	27,220	625	32,626	5,877	32,063	677	33,817	6,375	26,981	617	33,851	8,674	27,906	641	33,403
Khulna ...	... 1,253,043	7,130	34,955	1,154	32,939	7,395	32,555	1,087	34,941	6,734	33,165	754	30,598	7,149	34,461	1,002	33,592

NOTE.—In some years the District Boards did not spend the whole of the amounts allotted to them. In some years the Boards spent more than the amounts so allotted, the surplus being provided from their own funds. The amounts allotted by Government to the Boards were as follows :—

	1905-06.	1906-07.	1907-08.
District Boards—	Rs.	Rs.	Rs.
24-Parganas ...	23,592 - 443	33,592 + 2,766	33,592 - 1,416
Nadia ...	22,792 + 802	22,792 + 3,476	22,812 + 3,043
Murshidabad ...	19,064 - 1,959	19,064 - 1,255	19,064 - 662
Jessore ...	23,064 - 825	23,064 - 1,001	23,064 - 1,103
Khulna ...	20,790 + 3,866	20,790 + 6,788	20,790 + 5,306

The plus amounts show what was spent by the Boards from their own funds over and above the Government grant; the minus amounts show by how much the Boards failed to spend the full Government grant. Taking all these Boards together, the amounts spent over and above the Government grants were Rs. 1,677 in 1905-06, Rs. 7,739 in 1906-07, and Rs. 8,130 in 1907-08.

PRIMARY EDUCATION.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Will the Government be pleased to say whether it has any scheme before it for the extension of primary education, and whether it intends to materially increase the number of primary schools in these provinces in the near future ?

The Hon'ble MR. STREATFIELD replied :—

“ As the Hon'ble Member is aware, the question of the abolition of fees in Primary Schools has recently been considered by all Local Governments. This question is now awaiting the decision of the Government of India ; and it is clear that on that decision future action with regard to primary education must depend. Meanwhile, no definite schemes for increasing the number of Primary Schools in this Province is under the consideration of Government.”

MANUFACTURE OF SALT IN BENGAL.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Will the Government be pleased to consider the advisability of recommending the Government of India to allow one or two Companies, which are intended to be established by a Special Committee of the Association for the advancement of Scientific and Industrial Education of Indians, consisting of Raja Peary Mohan Mukerji and a few other gentlemen interested in the subject, to make once again the experiment of manufacturing salt in these Provinces without duty for three years, and also whether it is possible for it to afford any other help for the purpose of furthering the said object ?

The Hon'ble MR. OLDHAM replied :—

“ The views of Government as to the manufacture of salt have been already communicated to the Hon'ble Member in the answers given to questions put by him in this Council at the meetings held on the 2nd February, 1907, and the 4th April, 1908.

“ Any proposals which the Special Committee referred to may desire to make had better be submitted, in an explicit and detailed manner, by the Committee for the orders of Government in the Financial Department. They will then receive due consideration.”

BHAIRAB VALLEY DRAINAGE SCHEME.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Will the Government be pleased to say in what stage are the Bhairab Valley Drainage Scheme and the Jessore Drainage Scheme, and whether any steps are being taken for the making of water-works in Jessore town ?

The Hon'ble MR. OLDHAM replied :—

“ Government has no recent information in respect of the progress of the scheme for the drainage of the Bhairab Valley. The Commissioner of the Presidency Division will be asked to obtain from the Collector of Jessore a report as to how the project now stands. On receipt, the information will be supplied to the Hon'ble Member.

“ The Sanitary Engineer reports that the designing of the Jessore Drainage Scheme has been practically completed, and there only remains the tracing of the original drawings to be done. The scheme will be ready for submission to the Municipal Commissioners by the end of the year.

“ That officer also reports, in regard to the water-works project, that it has been found impossible to obtain a good supply of water from wells sunk in the bed of the Bhairab, and that, therefore, the source of supply will have to be tanks. The Municipal Commissioners have been asked to decide along which streets pipes should be laid.”

LAW COLLEGE.

The Hon'ble BABU JOGENDRA CHANDRA GHOSE asked :—

Will the Government be pleased to say whether it intends to make a large grant for the Law College proposed to be established by the Calcutta University? Will the Government be pleased to consider the admittedly inadequate means at its command, and whether there is any special necessity for such a college, and also the urgency of other educational demands which it is unable to meet, before making any such grant?

The Hon'ble MR. STREATFIELD replied :—

"This Government is fully convinced of the need for the Law College which the Calcutta University propose to establish. It is not anticipated, however, that much financial assistance will be required from Government; and it would be obviously premature to pretend to determine, at the present time, the amount of the grant that may be required or that may be reasonable."

THE MIDNAPUR CASE.

The Hon'ble BABU RADHA CHARAN PAL asked :—

(a) Is it a fact, as stated by Mr. Keays, Barrister-at-law, a defence Counsel in the Midnapur case, and reported in the *Statesman* of the 5th instant, that the refusal of the copies of the confession and the admission was made on the ground that they were not formally on the record, although they were used as an argument for not granting bail to the accused?

(b) Has the attention of the Government been drawn to a report of the *Amrita Bazar Patrika* of the 9th September, that a Police Sub-Inspector had brought back the Raja of Narajole from the door of the Court-room, "touching his neck from behind," and is this a fact?

(c) Is it a fact that Asutos Das, who, it is said, had been suffering from sinus in the hand, was arrested by Police who were in plain clothes, without a warrant, and handled so violently that his piteous cries compelled his mother to come to the protection of her son when she was seriously injured by the Police?

The Hon'ble Mr. DUKE replied :—

"None of these matters has been reported to Government. They are all matters which will either come before the Court of the Magistrate inquiring into the case in ordinary course or with which he is competent to deal if brought to his notice. Government does not consider that its intervention is called for at present."

THE BENGAL REPEALING BILL, 1908.

The Hon'ble MR. OLDHAM moved that the Bill to repeal the Howrah and Suburban Municipal Police Act, 1884, be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. OLDHAM also moved that the Bill be passed.

He said :—"As I explained on the last occasion, this is merely a formal measure. As the Howrah Municipality has been relieved of all police charges by the Government of India, and as the Suburban Municipality was abolished in the year 1888, there is no longer any necessity to retain this Act on the Statute Book. For these reasons it is proposed to repeal it. I move now that the Bill be passed."

The motion was put and agreed to.

**THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT)
BILL, 1908.**

The Hon'ble MR. DUKE moved for leave to introduce a Bill further to amend the Chota Nagpur Encumbered Estates Act, 1876.

The motion was put and agreed to.

The Hon'ble MR. DUKE introduced the Bill and moved that it be read in Council.

He said:—"The Chota Nagpur Encumbered Estates Act was passed thirty-two years ago in order to check the transfer of the patrimonies of ancient families who had formerly been the independent or semi-independent Feudal Chiefs of the country to alien purchasers.

"This process had attained serious proportions and threatened to be politically disastrous, for the Zamindars of old families, although often improvident, were respected by the people, and themselves respected the customary and traditional usages connected with land tenure, which are very different in Chota Nagpur to the more ordinary contractual relations of Bengal.

"New purchasers on the other hand in many cases, men of alien descent, whose sole aim and object is to make money, often insist on exacting as much as they can from the tenantry without regard to customary rights and privileges and their conduct has more than once provoked serious disturbances.

"That the law was wisely conceived and has generally answered the purpose for which it was passed is made clear by the fact that in March 1908, thirty-two years after it was passed, no less than 125 estates were being managed under its provisions.

"Experience has, however, exposed several defects in its operation.

"One of the most serious is that it may operate to render a reckless proprietor still more improvident in incurring debt.

"Once he realizes that the estate is so dipped that it cannot recover in his own time, he is under some temptation to continue his course as long as he can borrow anything at all, relying on Government to preserve the estate continually for his heirs. In several cases this has been carried so far that redemption has been found hopeless and Government has been obliged to stand aside and see an historic family dispossessed.

"To remedy this state of things, it is proposed that when it has become clear that a course of wasteful extravagance has been entered on, the Government may intervene and take the estate under management.

"The provision is contained in the second sub-clause of clause 2.

"Strong as it is the measure has been approved in principle by a majority of the great landowners of Chota Nagpur who have been consulted on it. It is recognized, however, as a measure which should only be used in exceptional circumstances; and it is therefore provided that the Local Government shall only approve such action in the case of families of political or social importance, or when it is desirable in the interest of the tenants. In order to enable the Deputy Commissioner to initiate action under this section, he is given by clause 3 power to obtain the necessary information as to the income of the estate and debts of the proprietor. Another important proposal is to give greater facilities to the Managers of encumbered estates to borrow money, whether for the consolidation of debt or for improvements. At present they can only borrow from Government or upon usufructuary mortgage and then only for re-payment of debt. It is then proposed by clause 12 to give power to borrow from any proper source at rates of interest approved by the Board of Revenue, and not only for payment of debt but also for the improvement of the estate. This may, in the long run, prove the best means for extinguishing debt.

"This necessitates clause 4 also, as provision has to be made for the repayment of debts so contracted.

"Another proposal is to prevent grants or assignments made to relatives in view of pending insolvency.

"Such grants defeat the creditors and make it difficult for Government to rehabilitate the estate, but it is only proposed in clause 6 to deal with them when the Commissioner is satisfied that they were not made in good faith.

"The next amendment to which I would direct the attention of the Council is that contained in clause 10. It has been found that improvident proprietors, whose estates have been taken under protection, continue to raise debts on bond, which being without security are generally at ruinous interest. As soon as the estate is released, they validate these bonds so that the estate shortly again becomes insolvent. It is therefore proposed to render a proprietor who has been restored to the possession of his property incapable (without the sanction of the Local Government) of again encumbering or of alienating the property. At one time it was thought that to render this measure effective, it would be necessary to incapacitate the heir also, but it has now been decided that it would be unfair to impose such a disability on a person who is not responsible for the original insolvency.

"The next two matters appear to have been mere oversights in the original law.

"Clause 11 empowers the Manager of an encumbered estate to investigate the titles of tenure-holders and under-tenure-holders.

"Clause 12 empowers the Manager to except leases—new section 18B.

"Clause 13 makes provision for the compulsory education of the children of proprietors, but only of such as have not been brought under protection by the initiative of the Deputy Commissioner.

"In fact the force of the provision is that, if a proprietor voluntarily seeks the protection of this law, he must agree to educate his family, and by so doing, to provide the best safeguard against their falling into similar difficulties.

"By clause 14 it is proposed to give the Board of Revenue the general power of supervision and control which it has under other Revenue laws and which can only be an additional safeguard for the proper exercise of the law.

"Clause 15 aims at preventing a disqualified proprietor from wasting money in litigation in which the Manager is not joined as a party.

"The Bill which I have had the honour to introduce and of which I have described the principal provisions is modest in its pretensions; it seeks only to remedy some of the more obvious defects in the existing law, but it is hoped that, so far as it goes, it will result in estates coming less frequently under the operation of the law, at least for a second time; in their remaining under protection for a shorter period, and in the production of a class of proprietors more alive to their obligations and to their best interests."

The Hon'ble BABU KALI PADA GHOSH said:—"I was not aware that the Bill would be introduced in today's meeting of the Council until entering the Council Chamber I saw the list of business placed on the table. I have had no opportunity to read the Bill, much less to consult any constituents.

The Hon'ble MR. DUKE introduced the Bill and moved that it be read in Council.

The motion was put and agreed to and the Secretary accordingly read the title of the Bill.

The motion was put and agreed to.

The Hon'ble Mr. DUKE also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Greer, the Hon'ble Mr. Streatfeild, the Hon'ble Mr. Chapman, the Hon'ble Babu Kali Pada Ghosh, the Hon'ble Maharajadhiraja of Burdwan, the Hon'ble Babu Deba Prasad Sarbadhikari and the Mover.

The motion was put and agreed to.

THE BENGAL COURT OFWARDS (AMENDMENT) BILL, 1908.

The Hon'ble Mr. GREER moved for leave to introduce a Bill further to amend the Court of Wards Act, 1879.

The motion was put and agreed to.

The Hon'ble Mr. GREER introduced the Bill and moved that it be read in Council. He said:—

“The Bill is a very short one. I do not think I need detain the Council with any lengthy description of it.

“The object is two-fold:—to facilitate the raising of loans for a ward's estate for the liquidation or consolidation of its debts, and to enable the Court of Wards to invest the surplus funds of an estate to better advantage.

“Under the existing law in this Province, loans for a ward's estate on mortgage of landed property can only be obtained from private parties. The number of capitalists who possess local knowledge of the conditions of an estate is usually so small that there is practically no free competition and, consequently, a higher rate of interest has to be paid than is justified by the security offered.

“At the same time there is always some estate which is in a position to advance the money from its surplus funds. Both estates, accordingly, are the losers. The clause will admit of loans being made from the funds of one estate under the administration of the Court of Wards to another such estate. Such loans, of course, would only be granted to solvent estates. The experience of the Court of Wards in the United Provinces has proved them to be both a remunerative investment and a convenient and economical means of providing funds for indebted estates. There is no reason why the estates under the Court of Wards in Bengal should be in a less favourable condition.”

The Hon'ble BABU GAJADHAR PRASAD said:—“With Your Honour's permission, I would like to say something in support of this measure. My experience of Bihar, tells me that it sometimes happens an estate under the Court of Wards may have money in deposit, but cannot advance it on safe credit, because it does not find a safe debtor. Another estate, under the Court of Wards, may be in urgent need, but may not find a suitable creditor, and the Court of Wards is helpless and cannot do anything in the matter. Sometimes Civil Courts are requested to postpone execution for months and months at the instance of the Court of Wards, but the Court of Wards is unable to raise the money in time. I think it will be affording benefit to both, because money will be always safe in the hands of the Court of Wards, and I think this measure should be carried.”

The motion was then put and agreed to, and the Secretary accordingly read the title of the Bill.

The Hon'ble Mr. GREER also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Duke, the Hon'ble Mr. Oldham, the Hon'ble Mr. Chapman, the Hon'ble Rai Kishori Lal Goswami, Bahadur, the Hon'ble the Maharajadhiraja of Burdwan, the Hon'ble Mr. Brown and the Mover.

The motion was put and agreed to.

THE CHOTA NAGPUR TENANCY BILL, 1908.

The Hon'ble Mr. VINCENT moved that the Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rents in Chota Nagpur be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL Goswami, BAHADUR, moved that, in clause 12A (now 13)* of the Bill, for the words "or his agent" the words "or of his agent if specially authorized in that behalf" be substituted. He said:—

"I propose this substitution in order to make the sense quite clear and to bring the language into conformity with that used in the Bengal Tenancy Act, in order to convey the same idea. Sir, it is extremely desirable that uniformity of language to express a common idea should be preserved in all the enactments of a Legislature. There is no doubt, Sir, as to what is intended by the words 'or his agent'. What is really intended is, that only a specially authorized agent can, by written consent, validate the sub-division of a tenancy made by a tenant. To make this sense quite clear, I propose this substitution, and I hope this motion will be acceptable to all the Hon'ble Members."

The Hon'ble BABU KALI PADA GHOSH seconded this motion.

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, in clause 16 (now 18) of the Bill, for the words "sub-sections (4), (5) and (6) of section 15 shall apply to such persons" the following be substituted, namely:—

sub-sections (3) to (6) of section 15 shall apply to such persons as if they were raiyats.

He said:—"This amendment is in the main a drafting amendment. In one particular there is, however, a substantial change proposed in the Bill. We have provided that Bhuinhars and Mundari khunt-kattidars who hold, and have held their lands in a village for a period of 12 years, shall be deemed to be settled raiyats of a village. It was pointed out that no provision had been made for the case of a Bhuinhar or Mundari khunt-kattidar who had inherited land from his father within a period of 12 years, although the joint occupation of father and son might exceed this period. To meet this we have made sub-section (3) of section 15 apply to the case of such tenants."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL Goswami, BAHADUR, moved that, in sub-clause (a) of clause 24 (now 26) of the Bill, for the word "seven" the word "three" be substituted. He said:—

"The object of clause 24 (now 26) is to annul enhancements of rent brought about by private contract during the last seven years. Under the existing law, which regulates the relations between landlord and tenant in Chota Nagpur Division, there is no specific prohibition against enhancement of rent by private contract. As a matter of fact, as stated in the Notice on Clauses appended to the Bill, rents have been increased in a very large number of cases by private contract. Now, Sir, if it is declared by a stroke of the pen by this Legislature that such enhancements made in the course of the last seven years are invalid, it will, I fear, be regarded as a great hardship by the landlords of Chota Nagpur. Sir, in the present Bill, a provision has been introduced by which enhancement of rent by private contract is altogether prohibited. This is a drastic measure, and in point of stringency goes beyond the Bengal Tenancy Act. I, however, Sir, do not raise my word of protest against that provision, for it is just possible that, in a backward place like Chota Nagpur, the bulk of the rural population, as a rule, may be yet in such a stage of primitive simplicity as not to be able to hold their own in

* The clauses and sub-clauses of the Bill having been re-numbered under the direction of the Council, the present number of each clause and sub-clause is inserted in brackets, wherever the new numbering differs from the old.

entering into a contract with the zamindars; but, Sir, to make a clean sweep of all contracts for enhancement of rent during the last seven years, will, I consider, be a great source of grievance to them. Section 29 of the Bengal Tenancy Act deals with the enhancement of rent by private contract. That provision of law, as Your Honour is aware, subject to certain limitations, validates enhancements of rent, if the enhanced rent has been paid continuously for three years. Sir, I will ask the Council to follow the precedent of the Bengal Tenancy Act, and to allow the retrospective operation of this provision of the law only in regard to contracts made within three years from the commencement of this Act."

The Hon'ble BABU KALI PADA GHOSH said:—"I regret I am unable to support the amendment moved by my hon'ble friend. He says there is no provision existing in the Chota Nagpur Rent Act by which private enhancement is in any manner prohibited, but if we have a look at section 21 of the existing Rent Act of Chota Nagpur, we find that it lays down: 'No other under-tenant or raiyat having a right of occupancy shall be liable to any enhancement of the rent previously paid by him, otherwise than in the manner provided under this section.' Reading this section as it stands, one would infer that the enhancement of rent payable by an occupancy raiyat can only be effected by filing a petition before the Deputy Commissioner. This section was subject to great discussion; and reading section 44 of the Rent Act along with section 21, one may say that private enhancements were not altogether interdicted. But, at any rate, section 21 of the existing Rent Act, as it stands, did not allow private enhancement, in the same sense as the Bengal Tenancy Act does, and it should also be borne in mind that there is a limit put by the Bengal Tenancy Act on all private enhancements, namely, that such enhancements should not exceed two annas in the rupee of the rent previously payable by the raiyat. And when private enhancement in Chota Nagpur was under no such limit, if there had been any private enhancement, I think that it is very necessary to see that such enhancement was fair and equitable, but three years' payment does not give us a guarantee that it was so. Under the circumstances, I do not think the period of three years would be quite adequate, though at the same time I am rather doubtful whether the period of seven years is not too long, and I may have to say something on the next amendment, when moved."

The Hon'ble MR. VINCENT said:—"I regret that I am unable to recommend the Council to accept this amendment. Under the existing Law, as will be seen on an examination of section 24 of Act I of 1879, all enhancements of the rent of an occupancy raiyat made otherwise than by order of the Deputy Commissioner are prohibited. It has been found, however, that in many cases, this provision of the Law has been evaded, and to meet such cases the proposals contained in clause 24 (now 26) of the Bill have been made. It does not appear to me that landlords have any reasonable ground for complaint in the matter; in fact a very great concession is being made to them. They have enhanced rents in direct violation of the existing Law: nevertheless, in order to avoid creating disturbances and dissensions, the Government is prepared to validate such illegal contracts, provided that the rents have been paid for a space of 7 years, and no sound reasons have been given for reducing that period.

"The argument in favour of a period of three years based on section 29 of the Bengal Tenancy Act is of no weight. Enhancements under section 29 are subject to two conditions—firstly, the contract must be in writing and registered, and secondly, the enhancement is not to exceed two annas in the rupee. The proviso regarding 3 years' payments only affects the condition that a contract must be in writing and registered, and if enhancements of over two annas in the rupee are made, then payments for 5 or 7 years will not, under the Bengal Tenancy Act, validate a claim for the enhanced rent. To argue therefore that, in legalizing enhancements, provided they are not unfair and inequitable, in Chota Nagpur, we should follow the 3 years' rule of the Bengal Tenancy Act is unsound. We admit enhancements over

two annas in the rupee if they are not unfair, but we require a reasonably lengthy period of payment to raise a presumption that the rent is fair and that the raiyat has willingly paid it."

The motion was put and lost.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that since the last amendment was lost, in sub-clause (a) of clause 24 (now 26) of the Bill for the word "seven" the word "five" be substituted. He said:—

"Since the foregoing amendment is lost I make this alternative proposal. I think it will be under the circumstances the better course to accept a mean between 3 and 7 years for annulling enhancements of rents arranged under private contracts. It seems to me, Sir, that the Hon'ble Member in charge of the Bill is wrong in interpreting the provision of the Bengal Tenancy Act in regard to enhancements of rent by private contract. Three years' continuous payment of rent will under that law validate enhancements of rent, even if the contract for enhancement is not in writing and is not registered, provided the increment is not more than two annas in the rupee. If it is in writing and registered, then three years' continuous payment of enhanced rent is not a *sine qua non*, but the limitation of two annas in the rupee applies to it as well. I trust, 5 years' limit will be acceptable to the Hon'ble Members."

The Hon'ble BABU KALI PADA GHOSH said:—"I am not sure whether the period of 7 years is quite proper, it seems to be a little too long. If the Hon'ble Member in charge accepts this amendment, I am with him."

The Hon'ble MR. VINCENT said:—"I am not prepared to accept this amendment. The period of 7 years, as specified, has been accepted in these cases by the Settlement Department in Chota Nagpur for some years, I believe, and I am unwilling to reduce it. I regret the fact that I did not apparently make myself clear in regard to the meaning of section 29 of the Bengal Tenancy Act. That section is really quite clear. Where there is an enhancement over two annas in the rupee, 3 or 4 or 5 years' payment will not validate it; therefore, it is not safe, I say, to argue from the analogy of that Act to the Chota Nagpur Act. I see no reason to alter the period or diminish the period of 7 years as stated in the Bill."

The motion was then put and lost.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that, after the first proviso to sub-clause (1) of clause 27 (now 29) of the Bill, the following be inserted, namely:

Provided, further, that when the enhancement is claimed on the ground of a rise in prices,—

(i) the Deputy Commissioner shall compare the average prices during the decennial period immediately preceding the making of the application with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(ii) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for comparison; provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(iii) if, in the opinion of the Deputy Commissioner, it is not practicable to take the decennial periods prescribed in clause (i), he may, in his discretion, substitute any shorter periods therefor.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, also moved that the following proviso to sub-clause (1) of clause 27 (now 29) of the Bill be omitted, namely:

Provided, further, that all enhancements shall be limited in the prescribed manner (if any).

He said:—"I take these two amendments together at the request of the Hon'ble Member in charge of the Bill, though they deal with different questions. The first amendment is to add the proviso just read by me to clause 27 (now 29) of the Bill. It is merely a reproduction of section 32 of the Bengal Tenancy Act. The second ground laid down under clause 27 (now 29) of the Bill authorizes enhancements of rent, on the basis of a rise in the average local prices of staple food-crops. It is found, as a matter of fact, that it is difficult to work out enhancements on that ground, unless some definite lines are indicated as to the method of inquiry to be pursued for the purpose of determining what would be a fair enhancement on that basis. Owing to a general rise in the price of food-crops, the cultivators at the present time derive a substantially larger profit by the sale of their field produce. The rise in the price is due to circumstances not brought about either by the exertions or at the cost of either the tenant or the landlord. Under such circumstances, Sir, the unearned increment ought to be fairly apportioned between the landlord and the tenant. A definite rule of proportion for such apportionment ought therefore to be laid down in the body of the law itself for the guidance of the Courts, which will have to deal with cases for enhancement of rent on the basis of the rise of price of staple food-crops. Section 32 of the Bengal Tenancy Act formed part of that Act when it was passed in the year 1885. I think, Sir, you will pardon my referring briefly to the antecedent literature which led to the framing of that section in the Bengal Tenancy Act. Sir, you are well aware that an important Commission was appointed a few years before the Bengal Tenancy Act was launched to investigate thoroughly all questions relating to landlords and tenants, with particular reference to the Permanent Settlement Regulations and the immense volume of literature on the subject, and to examine the then state of the laws regulating the relations of the landlord and the tenant. The members of the Commission submitted a valuable report, and the Tenancy Act of 1885 is mainly grounded on it. Speaking about enhancements of rents on the basis of rise in the average prices of food-grains, the report says:—

From this analysis it will appear that the component elements of this ground of enhancement are sufficiently complex; and looking at the above considerations, it is not very easy to say how the increment arising from increase of price ought to be divided so as to make the division fair to both parties.

"The Commission recommended that the increment should be equally divided between landlord and tenant on that ground. But the Select Committee, which sat to consider the Bill which afterwards became the Bengal Tenancy Act of 1885, preferred to follow the proportion laid down in the well-known case, popularly called the Great Rent Case, which was decided by a Full Bench of the Calcutta High Court, consisting of all the learned Judges of that Court, during the Justiceship of the late Sir Barnes Peacock. They accordingly fixed that one-third of the increment will go to the tenant and two-thirds to the landlord. The reason the Select Committee assigned for giving the one-third to the tenant was to cover the increase of cost of production. The Select Committee, on this point, reported as follows:—

We recognized the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit, we have fixed the deduction of one-third as a general rule.

"Sir, this was the state of the law in the year 1885, and it stands unchanged even now, in spite of the several revisions it has gone through, notably the last exhaustive revision by Your Honour's Council last year. I think, Sir, that the rule of proportion laid down in the Bengal Tenancy Act is supposed to be fair and equitable even now. I therefore submit, Sir, that the addition of this proviso will be a great help to the judicial and executive officers in ascertaining fair enhancements of rents on the basis of the rise in the average prices of food-grains in the locality. I will also add, Sir, that this provision of the Bengal Tenancy Act has been extended to Orissa. A survey and the preparation of a record-of-rights are now in progress in Chota Nagpur, and I hope, Sir, that in the course of a few years it will be completed. The papers which will be available in such a survey will help to determine a fair enhancement of rent on the two other grounds

mentioned in clause 27 (now 29) of the Bill, but I do not think, Sir, that those papers will be of any great help in the determination of the question of enhancement of rent on this ground. It is therefore desirable that a proper proportion should be laid down in the Chota Nagpur Act, such as has been done in the Bengal Tenancy Act.

"I shall now submit my observations on the second part of the amendment. In the law that is at present in force in Chota Nagpur, no definite grounds have been laid down for enhancements of rent. Such a condition of the law is unsatisfactory, and it will, I am sure, be remedied by clause 27 (now 29) of the Bill. The first proviso to that clause lays down definitely the three grounds on which alone an enhancement of rent should be allowed. As the marginal notes of the Bill inform us, these grounds have been borrowed from the United Provinces Tenancy Act and the second proviso from the Tenancy Act in vogue in Bengal. That second proviso is in the nature of an elastic safeguard, which says that no Court shall decree any enhancement of rent which is, under the circumstances of the case, unfair or inequitable. But, Sir, the Bill does not stop there, but it proceeds further and proposes the unprecedented course of restricting enhancements by rules to be framed by the Local Government, even when one or more of the conditions laid down in proviso (1) of clause 27 (now 29) has or have been satisfied and the increment is also found to be fair and equitable. This, Sir, seems to be a very objectionable method of legislation.

"I, Sir, deprecate legislation by rules, which, I respectfully submit, should be confined to details as auxiliary to the main principles enunciated in the body of the law itself, but which should not control, override or limit them. Sir, the limitations for the right of the landlords to enhance the rent of their tenants should be fully stated in the body of the law, and not partly in the law and the rest in the rules, giving the rules the pre-eminent position to limit enhancements which satisfy the conditions laid down in the law which sanctioned the making of rules. Sir, I am not aware of the way in which the enhancement is going to be limited by the rules, but the proviso as it is at present worded admits of considerable latitude. It will enable the Local Government to lay down rules to restrict enhancements, even after all the conditions laid down in the Act are satisfied and they are found to be fair and equitable. Sir, any limitation on what is fair and equitable can hardly be founded on sound principle. The enhancement is fair and equitable, and ought to be the last word on the subject. But, Sir, if the proviso I protest against, read with sub-clause (1) of clause 256 (now 264) of the Bill which speaks of the rules to be laid down by the Government, means that the Local Government shall have power to make rules for prescribing the manner in which fair rents should be ascertained on the basis of the grounds laid down in the first proviso of clause 27 (now 29) then I respectfully submit that the Hon'ble Member in charge of the Bill should frame the proviso in such a way as to convey that sense, and then, Sir, I for one shall heartily support it."

The Hon'ble BABU KALI PADA GHOSH said:—"I am certainly in sympathy with the first part of the amendment, but at the same time I do not think that this addition is absolutely necessary for the purposes of our Act. Clause 27 (now 29) of the Bill deals with an application for enhancement. The Deputy Commissioner shall have to consider all the circumstances set forth in that application, and he may decree such enhancements as may seem to be fair and reasonable. I should say that, in considering the circumstances of the case, the Deputy Commissioner will certainly consider the data which are sought to be provided for by the amendment which is practically section 32 of the Bengal Tenancy Act; so I do not think that it would be absolutely necessary to have that amendment in our Act: nevertheless, I should say, I am not opposed to it. As regards the second part of the amendment, I must say that I had considerable difficulty in giving my consent to this proviso in clause 27 (now 29) of the Bill when the Bill was discussed in the Select Committee. I must say that I was opposed to this proviso from the very beginning, because to my mind it

appears that there are already in the Act sufficient safeguards to ensure the fairness of enhanced rent. We have in this Bill, Sir, done away with all private enhancements after the passing of the Act. Enhancement can hereafter only be made by either the Deputy Commissioner or the Revenue-officer, and when we take into consideration the fact that we have put in a clause to the effect that no enhancement should be allowed if unfair and inequitable, I think we have provided sufficient safeguards for the purpose we have in view. But the Hon'ble Member in charge of the Bill was of opinion that unless this proviso was added, the raiyats will be ruined in many cases. I should be the last man to protest against any measure which is calculated to prevent the ruin of the raiyats. But I gave my consent to this proviso, as I was given to understand that, if any such limits be prescribed by the Government, the people will have an opportunity to represent their views, and the notification which may be issued on this subject will not be validated finally before the people are given such opportunity. I submit to Your Honour that we have provided many things in the Bill to be prescribed by notification, but in regard to this particular matter, I should say that in case the Hon'ble Member in charge does not see his way to accept this amendment, the people should be given sufficient opportunity to place their views before Government. Subject to this limitation, I gave my consent to this proviso."

THE Hon'ble BABU DEBA PRASAD SARBADHIKARI said:—"The choice in the Select Committee was as to whether the enhancement was to be limited to two annas in the rupee or something else. That might make matters far worse than if the enhancement was not so limited. The Select Committee under the circumstances were convinced that it would be best to leave the matter alone for the present, as both the raiyats and the landlords could be sure of more generous treatment if the Government was allowed to make rules than if they were limited to two annas in the rupee. It was not considered advisable to limit the enhancement by the Act, because in Chota Nagpur, where the prices of food-grains had an abnormal rise, an enhancement of two annas in the rupee would not be inadequate. Therefore, Sir, I am unable to support the second part of the amendment. Nor can I support the first part because, as has been pointed out, sub-clause (c) of clause 27 (now 29) of the Bill gives the Deputy Commissioner abundant opportunities to take into consideration all the circumstances placed before him. We must remember that in regard to section 32 of the Bengal Act, we have not in Chota Nagpur that class of Courts which the Bengal Act deals with. Moreover, the Deputy Commissioner, who would have to deal with these matters with his very many other duties, would be overburdened, if all these complex rules of the Bengal Act were to be made a part of the Chota Nagpur Act. Having regard to sub-clause (c) of clause 27 (now 29) of the Bill, there is no reason why the details laid down in section 32 of the Bengal Act or any other details that may be necessary to consider should not be fully gone into by the Deputy Commissioner, if he chooses so to do. These are, however, provisions, Sir, that we can hardly advise the Council to incorporate in the present Bill."

THE Hon'ble MR. VINCENT said:—"I regret also that on this point I can only recommend the Council to reject the proposed amendment. It is essentially necessary that power to limit these enhancements should be retained by the Local Government. Rules need not necessarily be issued under sub-clause (c) of clause 27 (now 29) of the Bill, but rules will be issued if any necessity arises. If the proviso which it is proposed to omit is examined, it will be seen that it runs thus: 'Provided, further, that all enhancements shall be limited in the prescribed manner (if any).' Prices of staple food-crops have, in many parts of Chota Nagpur, increased 200 and 300 *per cent.* within the last 20 years, and, if enhancements based on these prices are allowed in the manner proposed in the amendment of the Hon'ble Member, the most serious agrarian disturbances will in all probability result. We have been referred to the Bengal Tenancy Act as the authority for the proposed amendment, but it has to be remembered that this Bill under discussion is one affecting aboriginal races in Chota Nagpur, and arguments based on the analogy of Bengal cannot be safely accepted in the case of such races."

" Personally, I may go further and say that I doubt very much if, even in Bengal, the provisions of section 32 of the Bengal Tenancy Act have ever been given full effect to, and I believe, if any general attempt is made to enhance rents in accordance with that section, there will be danger of serious discontent and disturbance among the agrarian population of the province. At any rate, in Chota Nagpur, for political reasons alone, it is necessary that the Government should retain power to limit those enhancements of the rents of occupancy raiyats, but, as I have said, it is optional with the Government to make rules, and not obligatory upon them to do so. It has been said that the words 'unfair and inequitable' in the second proviso of this clause provide a sufficient safeguard for the interests of raiyats, but you have to consider the point put before by one Hon'ble Member, that the Courts trying these cases will be the Courts of Deputy Commissioners. The words 'Deputy Commissioner' have been defined in the Bill and include Deputy Collectors, Assistant Collectors, and in certain circumstances Sub-Deputy Collectors empowered under the Act. In deciding whether rent is fair and equitable, or unfair and inequitable, a great deal depends on the personal equation. What one man may consider fair, another man may consider unfair; and bearing in mind the fact that comparatively inexperienced officers will try these cases, it is, therefore, the more necessary for the Government to retain power to prescribe rules generally limiting the amount of those enhancements, in order to obtain at least some uniformity in these cases. The Hon'ble Babu Kali Pada Ghosh is apprehensive, if I understood him correctly, that rules will be issued by Government without due consideration and without any opportunity being offered to the public of criticizing the same. This is incorrect. Before any rules are finally adopted, there must be, I believe, a draft publication, and during the period of this draft publication the public will have ample opportunity of criticizing the rules and submitting their views in regard to the same."

The motion was put and lost.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that at the end of sub-clause (f) of clause 30 (now 31) of the Bill the following be added, namely :—

or, if the landlord is unable to indicate any particular land as being held in excess, then the area alone.

He said :—" Clause 30 (now 31) of the Bill has been framed on the lines of section 52 of the Bengal Tenancy Act. As it was framed in 1885, it was without the sub-sections (5) and (6). Serious practical difficulties in the working of that section as it was in 1885 had been found, and the interpretation of the section as made by the High Court in their several rulings added to those difficulties, with the result that it was practically impossible to get any excess rent from excess area. The landlords generally do not possess complete records of their properties, and they are unable to indicate what is the particular excess land in respect of which they claim excess rent. To obviate that difficulty, the amending Act of 1898 was passed, which added the following sub-section to section 52 :—

(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding, exclusive of such excess area.

" In order that clause 30 (now 31) of the Bill may fit in with sub-section (5) of section 52 of the Bengal Tenancy Act, I have condensed the long sub-section into a short paragraph. I hope, Sir that this will be acceptable to the Hon'ble Members of this Council and to the other Hon'ble Members."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that before the proviso to sub-clause (1) of clause 31 (now 32) of the Bill the following be inserted, namely :—

Provided that, if the landlord proves that, at the time when the measurement on which the claim is based was made, there existed, in the estate or tenure or part thereof in which the holding is situate, a practice of measuring land before settling rents, the Deputy Commissioner may presume that the area of the holding as entered in any lease or counterpart engagement or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll), in the rent-roll relating to the holding was so entered after measurement.

He said :—“This is of course reproducing with certain alterations of a verbal character sub-section (6) of section 52 of the Bengal Tenancy Act, in order to fit in with the framework of the clause 31 (now 32) of the Bill. The sub-section (6) of section 52 of the Bengal Tenancy Act is due to the amending Act which was passed last year by this Council, and I hope, Sir, that this will be also acceptable to the Hon'ble Members of this Council.”

The Hon'ble BABU DEBA PRASAD SARBADHIKARI said :—“This amendment was very much needed.”

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, in sub-clause (1) of clause 55 (now 54) of the Bill, after the word “agent” the words “free of charge” be inserted. He said :—

“The law makes it obligatory upon every landlord to grant a receipt to a tenant for any rents paid. The words ‘free of charge’ are now inserted to make it clear that no fee can be demanded by a landlord for the delivery of such receipt.”

The Hon'ble BABU KALI PADA GHOSH said :—“I think this amendment is a necessary provision for Chota Nagpur, and I support the motion.”

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, in the proviso to clause 61 (now 60) of the Bill, for the words “rent which accrued due before the date of the sale and any rent so due” the following be substituted, namely :—

rent for any period prior to the date of sale, and rent due for any such period.

He said :—“The reason for this amendment is that it is the intention of the Government that a purchaser of a tenure or holding in execution of a rent decree shall obtain the same free of any liability for rent due prior to the date of sale. As the clause stands, a purchaser may be made liable for an instalment of rent which accrues due after the date of sale, for a period prior to the sale; that is to say the date on which the instalment is payable may be later than the date of sale, though the rent may be due for a period prior to the sale. It is, therefore, necessary to make it clear that the purchaser of a tenure or holding is not to be called on to pay rent for any period prior to the sale.”

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, at the end of the first paragraph of clause 88 [now sub-clause (1) of clause 89] of the Bill, after the words “section 86,” the following be inserted, namely :—

or any order passed in appeal under section 84, sub-section (2a).

He said :—“Under section 88 as it stands, a Revenue-officer specially empowered in this behalf may revise and correct an entry in a record-of-rights. It is not desirable that he should be allowed to revise or correct any entry made in consequence of the decision of an appeal under section 84, and this amendment provides against his making any alteration in a record in such cases.”

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, in the proviso to clause 88 (now 89) of the Bill, before the words “section 86” the words “section 84, sub-section (2a), or” be inserted. He said :—

“This amendment follows as a necessary consequence upon the previous one.”

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that clause 88 of the Bill be numbered 88 (1) [now 89 (1)], and that the following be inserted thereafter, namely :—

(2) An appeal shall lie in the prescribed manner and to the prescribed officer from any order passed under sub-section (1).

He said :—“ It is advisable to provide for an appeal against an order of a Revenue-officer revising a record under clause 88 [now 89(1)], and the amendment is proposed to meet this object.”

The Hon’ble BABU KALI PADA GHOSH supported the motion.

The motion was put and agreed to.

The Hon’ble MR. VINCENT moved that the following amendments be made in sub-clause (1) of clause 123A (now 128) of the Bill, namely :—

- (a) before “section 82” insert “section 80 ;”
- (b) for “section 89, section 91, section 94 and section 96” substitute “sections 88 to 96 ;”
- (c) for “shall apply to such record as if it were a record referred to in these sections” substitute “shall apply as if such record were referred to in those sections.”

He said :—“ Clause 123A (now 128) is part of Chapter XV, which deals with the preparation of a final record-of-rights of village headmen, khunt-katti raiyats and others. Many of the provisions of Chapter XII, which deals with the preparation of an ordinary record-of-rights, are applicable in the case of records prepared under Chapter XV, and the amendment has been framed to utilize these provisions in the case of records prepared under Chapter XV.”

The motion was put and agreed to.

The Hon’ble MR. VINCENT moved that, in sub-clause (2) of clause 123A (now 128) of the Bill, for the words “section 97” the words “sections 94 to 97” be inserted.

He said :—“ This amendment is proposed for similar reasons to those just given for the previous amendment.”

The motion was put and agreed to.

The Hon’ble MR. VINCENT moved that sub-clause (b) of clause 131 (now 136) of the Bill be omitted, and that, in sub-clause (c) of the same clause [now sub-clause (b) of clause 136], for the words “who is not in charge of a sub-division, but is specially empowered by the Local Government” the words “who is empowered” be substituted.

He said :—“ The definition of ‘Deputy Commissioner,’ in clause 3, sub-clause (viii), has been amended, but by error this consequential amendment in clause 131 (now 136) was omitted.”

The motion was put and agreed to.

The Hon’ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that after clause 137 (now 141) of the Bill the following be inserted, namely :—

137A. (1) Notwithstanding anything contained in section
suit by co-sharer 250A, a co-sharer landlord may institute a suit to recover from
landlord for rent. a tenant—

- (a) his share of the rent, when such share is collected separately, or
- (b) the whole of the rent due to the plaintiff and his co-sharers, when all or any of his co-sharers who refuse to join in the suit are made defendants therein.
- (2) When, in a suit instituted under clause (b) of sub-section (1), the plaintiff is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant or the said landlords to furnish him with correct information on these points or either of them,

the Deputy Commissioner shall determine—

(i) what sum (if any) is due to the plaintiff for rent, interest thereon, and costs, and

(ii) what sums (if any) are due to the said landlords, respectively, on account of their share of the rent and interest thereon,

for the period in respect of which the suit is brought; and shall decree the suit accordingly.

(3) Notwithstanding anything contained in Explanation I to section 48, or in section 195, a decree awarding to a plaintiff a sum referred to in clause (i) of sub-section (2) shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(4) When the sums due from a tenant to any co-sharer landlord are determined under clause (ii) of sub-section (2), in respect of any period, then no further suit shall lie against such tenant for rent alleged to be due to such landlord in respect of that period.

He said:—"Sir, I understand that the Hon'ble Member in charge of the Bill is prepared to accept this. This addition is based on the lines of section 148A of the Bengal Tenancy Act. Section 148A was enacted last year simply for the purpose of giving relief to co-sharer landlords, who had no opportunity to recover rent by the sale of the tenancy. The history must be fresh in the minds of the Hon'ble Members, so I do not intend to dilate at length on this point. The co-sharer landlords of Bengal and Bihar are deeply grateful to Your Honour for affording them facilities to realize their rents by the enactment of section 148A of the Bengal Tenancy Act. Your Honour will earn the gratitude of the co-sharer landlords of Chota Nagpur by extending the same facilities to them by sanctioning the addition proposed by me."

The Hon'ble MR. VINCENT said:—"I recommend the Council to accept the amendment in its present form on the understanding that the amendment standing in the name of the Hon'ble Member, to insert before clause 251 (now 258) of the Bill a new clause 250A (now 257), is also pressed. If he will undertake to propose that amendment, I recommend the Council to accept the present one."

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that the following words in sub-clause (3) of clause 140 (now 144) of the Bill be omitted, namely:—

"the statement required by clause (ii) of sub-section (2) must also show the rental of the original tenancy according to the record-of-rights, and.

He said:—"Sub-clause (2) of clause 140 (now 144) already provides that the recorded rental of the tenancy shall be stated in any application under this clause. It is unnecessary, therefore, to provide for the same thing in sub-clause (3)."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that after clause 195 (now 196) of the Bill the following be inserted, namely:—

Execution of rent
decrees obtained by a co-sharer landlord. 195A. When one or more co-sharer landlords applies or apply for the execution of a decree obtained in a suit instituted under clause (b) of section 137A by the sale of a tenure or holding, the Court executing such decree shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

He said:—"The necessity of this addition to clause 195 (now 196) of the Bill is patent. Clause 137A (now 142) which has just been passed necessitates the safeguarding of the interest of co-sharer landlords other than those applying for execution of decree by giving notices to them of the decree by the sale of tenure or holding."

The Hon'ble MR. VINCENT said :—“ I recommend the Council to accept this amendment.”

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, also moved that after the word “sections,” in clause 206 (1) [now 208 (1)] of the Bill, the figures “12” be inserted. He said :—

“ The object of this is that section 12 of the Rent Recovery Act should not be made applicable to sales effected under the provisions of the Chota Nagpur Tenancy Bill. The reason is that the provision of section 12 of that Act is not sufficiently wide to cover all cases that will spring up under the Rent Act which is now being enacted for Chota Nagpur. The next amendment which will be proposed by me deals with the disposal of the sale proceeds of a tenure or holding.”

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that after clause 206 (now 208) of the Bill the following be inserted, namely :—

Disposal of proceeds of sale under tenure or holding under section 206. (1) In disposing of the proceeds of the sale of a tenure or holding under section 206, the following procedure shall be observed, that is to say :—

- (a) there shall be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after those sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have accrued due to him in respect of the tenure or holding between the institution of the suit and the date of the sale; and
- (d) the balance (if any) remaining after the payment of rent referred to in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application:

Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit instituted under clause (b) of section 187A,—

(i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b) of this section, be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and

(ii) if there remains a balance, payment of any rent which may have accrued due in respect of the tenure or holding between the institution of the suit and the date of sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and other co-sharer landlords in proportion to their respective shares in the tenure or holding.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Deputy Commissioner shall determine the dispute, and the determination shall have the force of a decree.

He said :—“ This is merely a reproduction of section 169 of the Bengal Tenancy Act, and I hope that both the foregoing and this amendment will be acceptable to the Hon'ble Members.”

The Hon'ble MR. VINCENT said :—"I recommend the Council to accept this amendment as an improvement on the provisions of an existing law on the subject."

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, before the first proviso in section 206 (1) [now 208 (1)] of the Bill, the following be inserted, namely :—

Provided that the purchaser at any such sale shall not be entitled to annul any lease, right or tenancy referred to in clauses (a) to (e) of section 13 of this Act.

He said :—"This is how the amendment stands on the list. With Your Honour's leave I propose that it should run in this manner: "Provided that the purchaser of a tenure at any such sale, etc., etc.

"The amendment is proposed in order to protect certain interests in the event of a sale of a tenure in execution of a decree for arrears of rent. When a resumable tenure is resumed under section 13 certain interests have been safeguarded, and it is only reasonable that, in the event of the sale of a tenure, the same interests should be protected. There are, it may be noted, similar provisions in the Bengal Tenancy Act for the preservation of protected interests in sales in execution of decrees for rent obtained under that Act."

The motion was put in the amended form and agreed to.

The Hon'ble MR. VINCENT moved that, in sub-clause (3) of clause 213 (now 215) of the Bill, after the figures "208" the following be inserted, namely :—

of this Act or under section 280, section 281 or section 282 of the Code of Civil Procedure.

He said :—"Sales of immovable property in execution of decrees under this Act, in certain circumstances, are held in accordance with Bengal Act VIII of 1865, and in other cases are held in accordance with the Code of Civil Procedure—*vide* clauses 206 (now 208) and 207 (now 210) of the Bill. In sales under clause 206 (now 208), third parties claiming an interest in the property about to be sold can put forward claims under clause 208 (now 211), and the decision of the executing Court on such claims is not subject to appeal, but a right of separate suit within one year is reserved. In the case of sales under the Code of Civil Procedure, sections 278 to 284 of that Code have been made applicable by clause 207 (now 210) of the Bill, and there is, in the case of ordinary Civil Courts, no appeal against an order made under section 280, 281 or 282, but in clause 213 (now 215) of the Bill all orders passed after decree and relating to the execution thereof, except orders under clauses 204 (now 206) and 208 (now 211) are made appealable. It is necessary, therefore, to make it clear that, in the case of sales under clause 207 (now 210) of the Bill held in accordance with the Code of Civil Procedure no appeal lies against any order passed under sections 280, 281 or 282 of that Code."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that, after clause 229 (now 232) of the Bill, the following be inserted, namely :—

Limitation of certain suits for ejectment. 229A. Suits for the ejectment of an occupancy-riayat or a non-occupancy riayat on any of the grounds mentioned in section 21 or in clauses (b) and (c) of section 41 shall be instituted within two years from the date of the misuse or breach complained of.

He said :—"Having regard to the backward condition of the landlords and tenants in Chota Nagpur, the Bill has in several instances for the benefit of the tenants provided much longer periods of limitation than those provided in the Bengal Tenancy Act for similar cases. In the present instance, which is for the benefit of the landlord, the current has run counter. One year's limitation has been provided in this case; whereas in suits under the section of the Bengal Tenancy Act corresponding to clause 21(b) [now 22(b)] two years'

limitation has been provided. I think that in such a backward place as Chota Nagpur, two years' limitation should be provided for all ejection suits referred to in my amendment. It cannot be expected that landlords in Chota Nagpur can be as vigilant as those in Bengal."

The Hon'ble MR. VINCENT said :—"I recommend the Council to accept this amendment."

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, in clause 234 (now 238) of the Bill, for the words "possession of a village by a village headman, whether known as a pradhan, manji or otherwise" the following be substituted, namely :—

possession of his office or agricultural land by a headman of a village or a group of villages, whether known as manki or pradhan or manji or otherwise.

He said :—"The wording of clause 134 (now 139), sub-clause (6), was altered by the Select Committee. By error, clause 234 (now 238), which deals with the period of limitation for suits under clause 134 (now 139), sub-clause (6), was not altered. The necessary alteration has now been made."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL Goswami, BAHADUR, moved that, before clause 251 (now 258) of the Bill, the following be inserted, namely :—

Joint-landlords.

Joint-landlords.

250A. When two or more persons are joint-landlords, anything which a landlord is, under this Act, required or authorized to do must be done by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

He said :—"The object of this is to prevent harassment to tenants caused by multiplicity of suits. This is taken from the Bengal Tenancy Act, and is a reproduction of section 188 of the Bengal Tenancy Act."

The Hon'ble MR. VINCENT said :—"It is gratifying to find this proposal made by a representative of the landlords of Bengal, and I recommend the Council to accept the amendment."

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that, in clause 251 (now 258) of the Bill, before the words "section 85" the words "section 84" be inserted.

He said :—"This amendment is proposed in order to give the same finality to decisions of Revenue-officers settling fair rents under clause 84 (now 85) that is given to their orders under clauses 85 and 86 (now 86 and 87)."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL Goswami, BAHADUR, withdrew the following motion standing in his name, namely :—

'that sub-clause (ii) of clause 256 (now 264) of the Bill be omitted.'

The Hon'ble MR. VINCENT moved that, in sub-clause (viii) of clause 256 (now 264) of the Bill, before the words "Chapter XIII" the words "section 88" be inserted.

He said :—"This amendment is proposed to correct an omission in drafting clause 256 (now 264)."

The motion was put and agreed to.

The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, moved that in sub-clause (1) of clause 260 (now 268) of the Bill, for the words "in any manner provided in Chapter XVI for the recovery of money" the words "as if they were arrears of rent" be substituted.

He said:—"I understand, Sir, that this will be accepted by the Hon'ble Member in charge of the Bill, so I need not say anything more."

The Hon'ble MR. VINCENT said:—"I recommend the Council to accept this amendment."

The motion was put and agreed to.

The Hon'ble MR. VINCENT moved that the Secretary be directed to re-number the clauses and sub-clauses of the Bill in consecutive order, and to make corresponding alterations in all cross-references thereto.

The motion was put and agreed to.

The Hon'ble MR. VINCENT said:—"I have now to move, Sir, that the Bill, as settled in Council, be passed. In doing so, I have little to add to the statement I made when introducing the Bill into Council. I attempted then to explain the main principles of the Bill, and there have been save in one respect no departures from those principles in the amended Bill which is now before the Council. Errors and defects have been discovered by the Select Committee on minor points, and I have every reason to be grateful to my Colleagues on the Committee, more especially the non-official Members of the same, for the assistance rendered to me in correcting them, but the main features of the Bill have remained, save in one particular, unaffected by these modifications. The one particular to which I refer is the question of the jurisdiction of Civil Courts. In the Bill, as introduced into Council, there were two clauses which materially curtailed the ordinary jurisdiction of these Courts, and I mentioned at the time that it would be necessary to consider these clauses very carefully in the Select Committee. I refer to clause 95 and sub-clauses (5) and (c) of clause 134 (now 139). Clause 95 is now excised from the Bill, as also sub-clause (5) of clause 134 (now 139), and in this respect there has been a material change in the Bill now before the Council, but all the other main features of the original Bill have been retained. The principle of the settled raiyat has been accepted in Chota Nagpur, and the rights of non-occupancy raiyats in their holdings have been safeguarded. Enhancements of the rents of occupancy tenants by private contract have been prohibited in clear language, and provision has been made for the commutation of rents payable in kind into rents payable in cash. The prohibition against the sale of their holdings by raiyats has been relaxed in certain cases, and all tenants have been protected against the imposition of fresh abwabs or rakumats, and it is hoped that, by these protective measures, the interests of cultivators in Chota Nagpur have been safeguarded and that their position will be ameliorated. On the other hand, provision has been made for the settlement of fair rents by Revenue-officers, and for the preparation of records of landlords' privileged lands, and the interest of the landlords has been considered in these matters; the position of co-sharer landlords also is now ameliorated by the amendments proposed by the Hon'ble Rai Kishori Lal Goswami, Bahadur, and I venture to hope that this Bill may have a really beneficial effect in placing the relations of landlord and tenant in Chota Nagpur in a more settled and satisfactory condition."

The Hon'ble BABU KALI PADA GHOSH said:—"Sir, when the Bill was introduced into the Council last month, I made certain observations, referring specially to such provisions as seemed to be objectionable, and expressed a hope that they would be fully and carefully considered by the Select Committee to which the Bill was referred. It is, indeed, gratifying to observe that our hope has been realized in a great measure, and I feel bound to say that the Bill received, on the whole, a fair treatment at the hands of the Select Committee. A careful reading of the Bill as it now stands will show that it has been weeded of several objectionable features to

which I had made reference before. It may be said that there are still several provisions to which exception may be taken, but I think I may say without fear of contradiction that the law which we are now going to have is far more complete and satisfactory than the very imperfect Rent Law with which we had to deal for the last 30 years. How far it will be a satisfactory measure in its practical working is, however, another matter, as a great deal will depend upon the selection of officers, who will be entrusted to carry out those important provisions of the Bill which deal with customary rights, specially the provisions under the heads 'Record-of-Rights' and 'Settlement of Rents' and 'Landlords' Privileged Lands.' Sir, the recording of customary rights in jungles is a matter of supreme importance in Chota Nagpur, and I regret to observe that in the first few years of the settlement proceedings which, as Your Honour is aware, have already been commenced in Chota Nagpur, these rights were not recorded with such care and caution as the importance of the matter demanded, and the result has been very unsatisfactory in several cases. The raiyats in whose favour these rights were declared without due safeguard and limits have made an abuse of their rights, and the result has been a waste of jungles in some parts of the district of Ranchi. Our worthy Deputy Commissioner, Mr. Stephenson, has already been impressed with the necessity of having a special legislation for the protection of jungles in Chota Nagpur, but before it is enacted, I submit to Your Honour that it is very desirable to entrust this important duty in the hands of experienced officers competent to deal with the subject. A law may be very good on paper, but unless it is worked by an officer, who is able to cope with the situation which this difficult problem of customary rights involves, it is not guaranteed to secure the confidence of the people for whom that law is intended. It may be within Your Honour's recollection that during the discussions of the Bill in the Ranchi Conference, I drew Your Honour's special attention to the fact that very competent officers should be selected for the carrying out of the provisions relating to the recording of customary rights, and I repeat that prayer also on the present occasion.

" It has been a long time since the first draft of this Bill was placed before the public, and we have had a long discussion over it. We are immensely grateful to Your Honour for the very keen interest which was taken by you throughout the whole discussion and for the anxious care which Your Honour evinced in trying to be personally acquainted with the requirements of the people who are directly interested in this Bill. Our acknowledgments are also due to the Hon'ble Mr. Vincent, the Member in charge of the Bill, for the great trouble which he has taken in shaping the Bill in a way that has met with the approval of the public generally and for the judicial frame of mind which he brought to bear upon the discussion of the Bill in the Select Committee.

" Before concluding, I crave Your Honour's permission to allude to one matter which, though not strictly relevant to the purpose of this Bill, is not altogether foreign to it. The Bill which is going to be enacted will apply to all the districts of Chota Nagpur excepting Manbhum, where it may be extended later on with certain modifications to suit the conditions of that district. The five districts within Chota Nagpur have, since time immemorial, formed one Civil District under one District Judge, who is called the Judicial Commissioner of Chota Nagpur. Your Honour, when I was leaving Ranchi yesterday to attend this Council Meeting, I was informed that a proposal has emanated from Government to curtail the jurisdiction of the Judicial Commissioner of Chota Nagpur by taking out of his jurisdiction two districts, namely, the districts of Manbhum and Singhbhum, and lump them with Sambalpur and form these three districts into one Civil District, under one District Judge, with head-quarters at Sambalpur. I wish that my information were not correct, as I can hardly believe that Government could seriously think of effecting a fusion of such incongruous elements. I unhesitatingly say, Your Honour, that the district of Maubhum and a good portion of Singhbhum have nothing in common with Sambalpur, and, to place them under the District Judge of Sambalpur, with head-quarters at Sambalpur, will be productive of as much hardship to the people of those two districts

as may be felt by the people of Hooghly and Burdwan if they were placed under the jurisdiction of the District Judge of the Sonthal Parganas, with head-quarters at Dumka. Your Honour, I fervently pray that at the close of your administration you will not accord your sanction to this scheme which, if carried out, will, I assure you, give a rude shock to the people of Chota Nagpur. We are already very grateful to Your Honour for the help which Your Honour rendered us in preventing the transfer of a good portion of Chota Nagpur to the Central Provinces, which was a part of the original partition scheme of Bengal.

"I should be highly thankful if Your Honour could see your way to make a definite pronouncement on the subject, so that it will be known how we really stand in regard to the proposed scheme."

The Hon'ble BABU JOGENDRA CHANDRA GHOSE said:—"I think we have every reason to congratulate the Hon'ble Member in charge of the Bill on the very satisfactory conclusion of his labours. When the Bill was introduced, I objected to it on two grounds. The first was about the curtailment of the jurisdiction of Civil Courts.

"My second complaint was that the provisions of the Bengal Tenancy Act should be introduced in Chota Nagpur, so far as they were possible. I find that the first objection has been given effect to, and as regards the second, I am glad to find that so much of the provisions of the Bengal Tenancy Act as can be introduced into Chota Nagpur have been introduced by the Select Committee, and to-day, through the exertions of my hon'ble friend, Rai Kishori Lal Goswami, Bahadur, most of his amendments were taken from the Bengal Tenancy Act, and which I am glad that the Hon'ble Member in charge of the Bill has accepted."

The motion was then put and agreed to.

The Council was then adjourned *sine die*.

CALCUTTA;

The 22nd September, 1908.

F. G. WIGLEY,

Secretary to the Bengal Council.



The Calcutta Gazette.

WEDNESDAY, DECEMBER 2, 1908.

PART IVA.

Proceedings of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal assembled under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met in the Council Chamber on Saturday, the 28th November, 1908, at 11 A.M.

Present:

The Hon'ble SIR ANDREW FRASER, K.C.S.I., Lieutenant-Governor of Bengal, presiding.
The Hon'ble MR. F. A. SLACKE, C.S.I.
The Hon'ble MR. W. C. MACPHERSON, C.S.I.
The Hon'ble MR. S. P. SINHA, ADVOCATE-GENERAL OF BENGAL.
The Hon'ble MR. E. W. COLLIN.
The Hon'ble MR. F. W. DUKE.
The Hon'ble MR. W. A. INGLIS, C.S.I.
The Hon'ble MR. C. E. A. W. OLDHAM.
The Hon'ble SIR CHARLES ALLEN, K.T.
The Hon'ble MR. E. P. CHAPMAN.
The Hon'ble IHTISHAM-UL-MULK RAIS-UD-DOWLA AMIR-UL-OMRAH NAWAB ASEF KUDR SYUD WASIF ALI MEERZA KHAN BAHADUR MAHABUT JUNG, Nawab Bahadur of Murshidabad.
The Hon'ble BABU KALI PADA GHOSH, M.A., B.L.
The Hon'ble RAI KISHORI LAL GOSWAMI, BAHADUR, M.A., B.L.
The Hon'ble MAHARAJADHIRAJA BIJAY CHAND MAHTAB BAHADUR, OF BURDWAN.
The Hon'ble BABU GAJADHAR PRASAD.
The Hon'ble BABU DEBA PRASAD SARBADHAKARI, M.A., B.L.
The Hon'ble MR. F. A. LARMOURE.
The Hon'ble MR. W. BROWN.
The Hon'ble BABU RADHA CHARAN PAL.
The Hon'ble MR. M. S. DAS, C.I.E.

NEW MEMBERS.

The Hon'ble MR. F. A. SLACKE, C.S.I., the Hon'ble MR. W. C. MACPHERSON, C.S.I., and the Hon'ble MR. M. S. DAS, C.I.E., took their seats in Council.

QUESTIONS AND ANSWERS.

CONSUMPTION OF LIQUOR.

The Hon'ble BABU GAJADHAR PRASAD asked:—

Will the Government be pleased to state whether the consumption of liquor has recently been on the increase? If so, to what extent? In view of the fact that the prices of food-grains are abnormally high and that the people are in distress, will it please the Government to state what measures the Government considers it necessary to adopt for the prevention of the increase of consumption?

The Hon'ble MR. OLDFHAM replied:—

"The general answer to the Hon'ble Member's question whether the consumption of liquor has recently been on the increase must be in the affirmative.

"In regard to the *extent* of the increase, it is to be remembered that only a little more than half of the area of the Province is under the contract or central distillery system. It is only with regard to this area that precise figures of consumption of liquor are available. With regard to the area under outstills, exact information as to the quantity of country spirit sold and consumed is not available.

"The Provincial Excise Administration Report for 1907-08, to which the Hon'ble Member is referred, shows a considerable increase of consumption only in Calcutta, Burdwan and the Sonthal Parganas.

"In Calcutta the increase was partly due to increase in population and increased wages, and partly to the larger supplies of liquor taken out by the vendors towards the end of last year in view of the increase in duty from April 1908.

"In Burdwan the increase was mainly due to a larger influx of the labouring classes in the collieries and to better wages paid to them, but was also in part due to reduction of exorbitant prices which were formerly charged by vendors.

"In the Sonthal Parganas it was mainly due to a very good lac business and to better wages earned by the labourers.

"In the central distillery areas of the Patna Division, where the effect of high prices of food-grains was more felt, the consumption of liquor decreased. A statement is placed on the table showing the consumption of country liquor in the several districts under the contract or central distillery systems during the first seven months of 1907-08, and the corresponding period of the current year. This statement shows a large decrease of consumption in Calcutta, the Patna Division and the Sonthal Parganas as compared with that of 1907-08.

"With the object of checking consumption, the duty on country spirit was raised in ten districts in the year 1907-08. And since the beginning of the current year, the duty or cost price has been further raised in twelve districts (or parts of districts). License fees have also been generally raised, and maximum retail prices have also been raised in certain districts. Reductions have been made in the number of liquor shops; and, on discussion of the subject at the recent Conference of Commissioners of Divisions, it was determined that the lists of licensed shops should be further scrutinised. It is also intended to abolish the outstill system throughout the Bhagalpur Division with effect from next year. Strength of liquor has been regulated in the contract and central distillery areas; and in Calcutta the maximum limit of strength has been reduced and further reduction is under consideration."

Statement showing the consumption of country spirit in the distillery and contract areas from April to October 1908 (seven months) as compared with the corresponding period of the previous year.

DIVISION.	District.	Consumption during the first seven months (April to October) of 1907-1908.	Consumption during the first seven months (April to October) of 1908-1909.	Increase or decrease during the current year.	REMARKS.
		Gals. L.P.	Gals. L.P.	Gals. L.P.	
Burdwan	Burdwan	27,307	29,530	+2,223	
	Birbhum	4,134	4,544	+410	
	Bankura	11,843	10,823	-1,020	
	Midnapore	19,662	18,462	-1,200	
	Hooghly	15,087	14,897	-190	
	Howrah	6,101	5,259	-842	
Presidency	24-Parganas	23,184	19,774	-3,410	
	Calcutta	191,745	155,748	-35,997	
	Nadia	5,926	4,905	-1,021	
	Murshidabad	5,200	4,748	-452	
	Jessore	3,288	3,003	-285	
	Khulna	3,818	3,746	-72	
Patna	Patna	55,996	39,767	-16,229	
	Gaya	30,048	19,542	-10,506	
	Shahabad	8,571	9,136	+565	
	Saran	22,698	18,388	-4,310	
	Champaran	3,589	3,662	+73	
	Musaffarpur	3,196	6,056	+2,860	Increase due to extension of distillery area.
Bhagalpur	Darbhanga	2,724	2,122	-602	
	Monghyr	15,499	17,962	+2,463	Ditto.
	Bhagalpur	5,938	10,531	+4,593	Ditto.
	Purnea	...	...	...
	Darjeeling	27,078	26,564	-514	
	Sonthal Parganas	49,818	41,979	-7,839	
Orissa	Cuttack	6,055	4,690	-865	
	Balasore	1,930	1,817	-113	
	Angul	...	...	...
	Puri	2,669	2,022	-647	
	Sambalpur	6,057	5,046	-1,011	
	Hasaribagh	7,189	6,106	-1,083	A portion of this district has been under the distillery system this year, but figures are not given, as there are no available figures for the last year.
Chota Nagpur	Ranchi	...	...	...
	Palamu	...	...	...
	Manbhum	67,260	67,303	+43	
	Singhbhum	...	...	...
	Total	632,610	558,132	+13,230 -87,708	

DISTURBANCES IN THE CHAMPARAN DISTRICT.

The Hon'ble BABU GAJADHAR PRASAD asked :—

Has the attention of the Government been drawn to the representation of the raiyats of Champaran, which was published in the *Amrita Bazar Patrika* of the 17th November, 1908 ? Will the Government be pleased to state whether it has taken any step to make an independent inquiry into the alleged grievances ? Will it please the Government to appoint a Commission, consisting of some high Government officers, some leading indigo-planters, and some distinguished Indian gentlemen of the Tirhut Division, for the purposes of such inquiry ?

The Hon'ble BABU KALI PADA GHOSH asked :—

Has the attention of the Government been called to the articles which have appeared from time to time in the *Bengalee* and other newspapers regarding the state of things in the Bettiah sub-division of the Champaran district ?

Is it the case that a number of persons were arrested and confined in *hujat*, and that they had subsequently to be released, as their arrest and confinement were found to be illegal owing to the absence of the previous sanction of the Government which is necessary for a Magistrate to take cognizance of the offences with which they were charged ?

Will the Government be pleased to inquire whether it is the case, as stated in one of the reports which appeared in the newspapers, that complaints made by the cultivators at the local thana against some indigo-planters were refused by the Sub-Inspector and the cultivators were referred to the Sadar ?

Is it the case that the Divisional Commissioner held a conference with the indigo-planters ?

Was any such conference held with the cultivators or their representatives ? If not, why not ?

Will the Government be pleased, in view of the troubled state of things in the Bettiah sub-division, to direct an independent inquiry into the situation by an officer unconnected with the locality ?

The Hon'ble BABU RADHA CHARAN PAL asked :—

(a) Has the attention of the Government been drawn to the report published in the *Bengalee* newspaper of the 30th October last, under the heading—"An apprehended Indigo Disturbance in Champaran," in which it is alleged that attempts are being made to compel the raiyats at Champaran to grow indigo and sugarcane on their lands on terms offered by the factories, and that people are intimidated and that a woman has been beaten to death ?

(b) Is it a fact that a petition has been submitted by the raiyats to His Honour the Lieutenant-Governor on the subject ? Has any reply been given to it ?

(c) Is it true that one of the signatories to the petition, named Sital Roy, was arrested, handcuffed and sent to prison without being informed of the charge on which he was arrested ?

(d) Is it a fact, as reported in the *Bengalee* of 3rd November, 1908, that 200 warrants have been issued for the arrest of the leading raiyats, who have refused to sow indigo in their lands ?

(e) Has the Government made inquiries into the matter ? If the allegations are true, what orders have the Government been pleased to pass for the protection of the raiyats ?

The Hon'ble MR. DUKE replied :—

"The attention of Government has been directed to the disturbances in Champaran ever since they commenced. Its attention was first attracted by the actual occurrence of breaches of the peace; for no representation had been addressed to it or any of its officers on behalf of the persons who

created the disturbance until breaches of the peace had taken place and the law had been put in motion to repress them.

"Government is not aware that any persons had to be released in consequence of the absence of its sanction to prosecute them, as sanction was granted in the cases in which it was asked for.

"It is not possible to answer in further detail at present, but Government has set itself to restore order and repress crime. The neighbourhood is now generally quiet; and, as soon as it is reasonably certain that there will be no further resort to violence, a full inquiry will be made into the causes of the outbreak. An experienced officer has been selected and furnished with full instructions as to the subjects to be examined; but no such inquiry could be undertaken without greater danger to the public peace or usefully conducted so long as the peace of the district continues to be disturbed."

MINISTERIAL OFFICERS SALARIES COMMITTEE.

The Hon'ble BABU KALI PADA GHOSH asked:—

At the meeting of the Council held on the 4th April last, the Hon'ble the Financial Secretary was pleased to observe that the Government considered it a matter of regret that final orders had not been issued until then on the recommendations made by the Ministerial Officers' Salaries Committee, and that certain further information had been called for by the Supreme Government, and endeavour was being made to supply this as early as possible.

Will the Government be pleased to state if final orders on this matter have been received by this time, and, if not, when the Government expects to receive the same?

The Hon'ble Mr. OLDHAM replied:—

"Final orders have not yet been received on the recommendations of the Committee. As the recommendations involve reference to the Secretary of State, this Government cannot say when orders will be received."

CASE OF PRISONER DURGA CHARAN SANYAL.

The Hon'ble BABU KALI PADA GHOSH said:—

I have the honour to call attention to the case of Durga Charan Sanyal of the Darjeeling Mail assault case, and to inquire if this Government has consulted the Government of Eastern Bengal and Assam. If so, will the Government be pleased to announce its decision with regard to the release of the prisoner?

The Hon'ble Mr. DUKE replied:—

"The Lieutenant-Governor has carefully considered the case of Durga Charan Sanyal and has also consulted the Government of Eastern Bengal and Assam on the subject. It has been decided that the prisoner should be kept under medical observation in jail for a period of six months. After the expiry of that period it is hoped that the Government will be in a position to pass final orders in the case. Meanwhile, it is proposed, in view of the doubts which exist as to the prisoner's sanity, that his treatment in jail should be as lenient as is compatible with proper discipline."

PUBLICATION OF AN INCRIMINATING ARTICLE ON THE TILAK CASE.

The Hon'ble BABU KALI PADA GHOSH asked:—

Is it the case that a warning was administered by the Government to some Anglo-Bengalee papers for publishing an incriminating article on the Tilak case, which formed a part of the Judicial proceedings in that case? If so, was any such warning administered to Anglo-Indian papers which published the self-same article? If not, will the Government be pleased to state the reason for this difference of treatment?

The Hon'ble MR. DUKE replied :—

“The warnings given were in every case confidential. They were addressed to all newspapers in Bengal which, to the knowledge of the Government, had republished the incriminating articles. They pointed out the impropriety and possible consequences of this conduct.”

VISIT OF CERTAIN STUDENTS TO CHAIBASSA.

The Hon'ble BABU RADHA CHARAN PAL asked :—

(a) Has the attention of the Government been drawn to the report published in the *Bengalee* newspaper of the 9th October last, in which it is stated that forty Science students of the Calcutta Presidency College went with their Professor to study Geology at Chaibassa on the 29th September, 1908, but that Mr. Carey, the District Officer, treated them with indignity and turned them away ?

(b) Did Mr. Carey, before taking such an extreme step, communicate with the Principal of the Presidency College or the Government in order to ascertain the *bona fides* of the students and their Professor ?

(c) If the facts stated in the newspaper be true, what notice has the Government been pleased to take of the conduct of Mr. Carey ?

The Hon'ble MR. DUKE replied :—

“The matter referred to in the report published in the *Bengalee* has been and still is, under the consideration of the Government.”

THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) BILL, 1908.

The Hon'ble Mr. Duke moved that the Hon'ble Mr. Slack be added to the Select Committee on the Bill further to amend the Chota Nagpur Encumbered Estates Act, 1876.

The motion was put and agreed to.

THE BENGAL COURT OF WARDS (AMENDMENT) BILL, 1908.

The Hon'ble Mr. Duke presented the Report of the Select Committee on the Bill further to amend the Court of Wards Act, 1879.

THE INDIAN LUNATIC ASYLUMS (AMENDMENT) BILL, 1908.

The Hon'ble Mr. Oldham moved for leave to introduce a Bill to amend the Indian Lunatic Asylums Act, 1858.

He said :—“Section 7 of the Indian Lunatic Asylums Act, 1858 (XXXVI of 1858), declares that a lunatic may be sent to an asylum in a Presidency-town under the simple procedure of an order signed by some person connected with the lunatic and supported by a certificate signed by two medical officers; and, when a lunatic is sent to an asylum under this section, the Visitors or the Superintendent of the asylum may require his friends to engage to pay his expenses in the asylum, unless it appears that they are wanting in means. When it is desired to send a lunatic to an asylum situated outside a Presidency-town, that can only be done (in cases where the Magistracy or the Police do not find it necessary to take action) under the order of the Civil Court, the obtaining of which is apt to cause much delay and expense to the parties.

“By section 17B of the Indian Lunatic Asylums Act, 1858, the Governor General in Council is empowered to direct that any Lunatic Asylum in Bengal which is situated at a greater distance than three hundred miles from Calcutta shall be deemed, for the purposes of the Act, to be situated in the Presidency-town; it is proposed by the present Bill to amend that section by getting rid of

this limitation as to distance. The result will be to admit of a direction being given to the effect that the asylum at Berhampore and the projected asylums at Ranchi (when opened) shall be deemed to be 'Lunatic Asylums at the Presidency,' and the simple procedure of section 7 will again become available for dealing with Calcutta lunatics."

The motion was put and agreed to.

The Hon'ble Mr. Oldham introduced the Bill and moved that it be read in Council.

The motion was put and agreed to, and the Secretary accordingly read the title of the Bill.

The Hon'ble Mr. Oldham also moved that the Bill be taken into consideration at the next meeting of the Council.

The motion was put and agreed to.

FAREWELL SPEECHES.

The Hon'ble the Nawab Bahadur of Murshidabad Amir-ul-Omrah said:— "Your Honour, with your permission I should like to address a few words regarding the abominable incident which took place nearly three weeks ago, which has so much convulsed society and thrown such a thick veil of shame over the country—I mean the dastardly attempt which was made on Your Honour's life at the Overtoun Hall in College Street, an event to which I cannot refer without the greatest regret. The gravity of the crime is only surpassed by the great indignation it has roused and the keen sympathy with Your Honour which it has evoked. The enthusiastic ovation that greeted you unmistakably showed with what abhorrence those present there looked upon the acts of the would-be assassin and with what thankful delight they cheered your most miraculous escape. It was the hand of Providence that saved your life. The exceptional courage and coolness which Your Honour displayed have won universal admiration. We were settling down to think that we had heard of or seen the last of such misdeeds, but the latest and most audacious development has undeceived us, and it seems as if all the assurances of loyalty and manifestations of devotion, the expressions of sympathy and promises of co-operation, the eloquence of speakers and the earnestness of writers, on the side of peace and order, have had but little effect in eradicating the evil which has now assumed such horrid proportions. Whatever may be the immediate object of these repeated villainous acts, there can be no doubt they have to a great extent tended to confirm the apprehension that this spirit of anarchism, confined though it be to a very small section of the community, has taken deeper root than many were aware of or cared to believe. And what is more deplorable, such misconduct cannot but bring misery upon the innocent for the misdeeds of the guilty.

"That such disgraceful incidents should conduce to leave a stain, a very black stain, on the traditional and proverbial loyalty of Bengal, is a matter much to be regretted. The tide of misfortune which is carrying the time-honoured reputation of the country for loyalty towards the abyss of destruction should no longer be allowed to pursue the ruinous course it has so unhappily taken. I speak with all the emphasis I can command, and assure you, if any assurances were required, that crimes and criminal inclinations such as these have nothing but our utter abhorrence and detestation. As I said not long ago, to the hopes and aspirations of the millions of India be commits untold mischief who by such nefarious deeds attempts to retard the progress which India under British Rule is steadily making in the path of advancement. Let every man, who has any sense of honour, any respect for the good name of his country and community, and any regard for his religion, help to the best of his ability in unravelling the mystery that shrouds these crimes and in eradicating the evil that is eating into the vitals of India.

"I offer Your Honour our sincerest congratulations on your narrow escape, and hope that the same protection may always be vouchsafed to you as spared your valuable life on the memorable evening of November 7th.

"In your immediate presence this is the last opportunity we have of expressing our appreciation of your work not only within the walls of this Chamber but also outside it. The several reforms and measures you have during your term of office inaugurated for promoting the welfare of the people entrusted to your charge have evoked, as they were bound to evoke, a deep sense of gratitude, and there can be little doubt that these will be living monuments of your thought, action and good work in the country which will, in but two days' time, with the greatest sorrow and reluctance bid farewell to you, but which will yet hope to profit by your help and sympathy, though you will be far away from it."

The Hon'ble MAHARAJADHIRAJA BIJAY CHAND MAHTAB BAHDUR of Burdwan said:—"Your Honour this is the last occasion on which you will preside over this Council. We, the non-official members of this Council, beg to offer to Your Honour our sincerest thanks for the very kind consideration that you have always shown to us in Council and out of Council. We, the members of the Hindu community, very deeply feel that, during the last days of Your Honour's *regime* in Bengal, we have given you trouble and anxiety through the misdeeds of a few misguided youths, encouraged by wicked lunatics behind. Sir, I may assure you, on behalf of myself and my Hindu colleagues in Council that the majority of us, a vast majority, I may say, very much deprecate the present state of affairs, and are quite willing to co-operate with Government in the restoration of peace and unity. The only thing we ask from Government is, that while it should take strong measures it should show a sympathetic attitude towards those who are truly loyal. Sir, it is with great reluctance that we bid you good-bye in Council. We sincerely hope and pray to God that you will have a safe and pleasant voyage to your home, and that from there you will be spared by God to take an interest in the province over which you have ruled for five years."

The Hon'ble BABU GAJADHAR PRASAD said:—"May it please Your Honour, as this is the last meeting of the Council over which Your Honour presides, I think it is my duty to express, on behalf of the people of Bihar, the deep debt of gratitude which they owe Your Honour, and express the deep regret which they feel at Your Honour's retirement.

"I am glad to say that Your Honour treated the people under your charge just as *Ma Baps* treat their children, and it was in accordance with that mode of treatment that you took special care for the Biharis and other backward people.

"It may be that you might have made some mistakes during your administration, but I think there can be no doubt that you had always the good of the people at heart.

"Your Honour gave us a Training College for female teachers, and thereby advanced the cause of female education, and, in this connection, I cannot help thanking Mr. Earle, our popular Commissioner, for the deep interest which he is taking in the institution.

"You gave us a Training College for teachers and thereby gave greater facilities to our young men to qualify themselves for teacherships.

"You improved the Patna College, the Medical School and the Bihar School of Engineering to a great extent. The Biharis are much indebted to Your Honour for the establishment of a Hindi Chair in the Presidency College and in the Patna College, and I hope your absence from India will not affect the stability of these institutions. I don't exaggerate when I say that your name has been a household word in Bihar, and the people of the province have rightly resolved to have a separate memorial to keep your *regime* fresh in the minds of the people.

"We always took you to be a virtuous ruler. God protects the virtuous, and it is the protecting hand of Providence that has preserved Your Honour on successive occasions terminating in the event at the Overtoun Hall. I

think that, except the anarchists, there is no soul in Bihar, Bengal and Orissa who does not condemn the dastardly attempt on the life of such a noble ruler.

"May Your Honour, Lady Fraser, and your children live in peace and prosperity is the prayer which Bihar puts up before the Almighty.

"Bihar is proud of and grateful to His Highness the Maharajadhiraja Bahadur of Burdwan for the courage and manliness which he displayed in trying to save the life of such a virtuous ruler at the risk of his own life, and I congratulate His Highness upon these virtues.

The Hon'ble Mr. M. S. Das said:—"Your Honour, I do not think that I should be doing my duty as representative of Orissa, neither do I think that I should be doing my duty to Your Honour if I do not, from my seat here, give expression to the feelings of gratitude which the people of Orissa have felt, and continue to feel, for the deep interest Your Honour has always taken in the affairs of Orissa. Though I had not the pleasure of watching the proceedings or associating myself with the proceedings of this Council during Your Honour's presidency, I know how anxious Your Honour was to see that Orissa was represented in this Council, and though this may be the last meeting of this Council, the people of Orissa have the satisfaction of knowing that there is more than one member. From the feudatory chiefs to the poor raiyats in Orissa, all have felt the keen interest, the keen and kind interest Your Honour has always taken. The law of landlord and tenant in Orissa has for some time been felt as being unsatisfactory, and the latest news we get is that Your Honour has deputed an officer, specially qualified for the purpose—Mr. Maddox—to inquire into the law of Orissa. I fully endorse the words in reference to the dastardly attempt on Your Honour's life—the words that fell from the Hon'ble Nawab Bahadur of Murshidabad and those of the Hon'ble Maharajadhiraja of Burdwan. I come from a province where anarchists and anarchism are not known, and the indignation felt here is more than surpassed by the indignation of the people of Orissa. And, certainly, we Indians have to congratulate ourselves that in this Council Room we have a nobleman, whose sense of duty to Your Honour, and whose loyalty to His Majesty, induced him to stand between the revolver and Your Honour's person. Let me assure you, Your Honour, that though a few villainous fanatics (their number is only very small) may entertain a dangerous political creed, which will die with them, either on the gallows or will be washed away in tears of penitence in the dark cells of a prison, the world outside is thoroughly loyal, and will remember your rule in this province with feelings of gratitude, sincere gratitude. Let me on behalf of the people of Orissa wish Your Honour a safe journey home, and long life and prosperity in your country amongst those who are dear and near to you."

The Hon'ble Mr. LARMOUR said:—"On behalf of the community I represent in this Council, I wish to express to Your Honour the feelings of indignation held by that community on the dastardly attempt made on Your Honour's life in the Overtoun Hall, and the relief felt by us all in the knowledge that the attempt of the would-be assassin had failed. That the Maharajadhiraja of Burdwan should have acted as he did by interposing his own person to receive the bullet intended for Your Honour is no surprise to us who have the privilege of his acquaintance. He has evidenced the courage of his convictions, not by word only but by acts, and has always loyally given his support to the maintenance of law and order among his fellow countrymen. My community, Sir, have always felt that in Your Honour as the Head of the Province we have had a just and upright Governor, who has looked with forbearance on our shortcomings and who has been a kind and sympathetic friend to all who have needed Your Honour's guidance and advice. During a time of sickness, overwhelmed with official work and full of family cares, you have always found time, Sir, not only to receive our written representations, but to give a patient hearing to our representatives whenever there has been occasion for them to trouble Your Honour with interviews, and I wish to thank Your Honour for your unfailing courtesy and kindness towards us. I do not think that I can add very much to what has already been said by the speakers who have

preceded me. I have no doubt that those who follow me will be able to express to Your Honour better than I have done the very great pleasure that one and all of the non-official members in Council have had in serving in the Council, with Your Honour as President. I join with these members in wishing Your Honour Lady Fraser and your family a very pleasant voyage home. We trust you will enjoy long rest and happiness in that small land we all call "Home" and to which every Englishman in this country looks forward to return."

The Hon'ble MR. BROWN said:—"Your Honour—With your permission I desire to add a word of very sincere regret that this is the last occasion on which you will preside at this Council. I wish also to acknowledge, as representing the mercantile community of Calcutta, the ever ready and sympathetic way in which you have invariably received any representations which they have put forward, as also the many opportunities you have given them of expressing their views on all matters affecting the welfare of the public. I assure you, Sir, that they have a very thorough sense of the great and exceptional difficulties which have characterised the period during which you have been the Ruling Head of this Province, and they fully appreciate the large measure of success which has attended your administration. During the last few months, in the very trying circumstances which have unfortunately existed, the strain which you have had to bear must have been very heavy, and the manner in which you have dealt with the position, and, in particular, your attitude in the face of grave personal danger, have elicited the admiration of all sections of the people. I congratulate you, Sir, that in bringing your administration to a close you do so amidst universal expressions of appreciation and regard, and that you carry away with you to such a marked degree the respect and good will of the people of this country."

The Hon'ble the PRESIDENT replied:—"Nawab Bahadur and Gentlemen, I thank you for the expression you have given to your feelings of loyalty, your execration of anarchy and crime, and your personal goodwill to me and mine. I am sure that there is a strong feeling throughout the country that sedition and lawlessness must be put down with a strong hand, and that the loyal subjects of His Majesty must stand by the Government in this matter. The vast majority of the people are loyal; and they will no longer (I believe) suffer the tyranny of a small but unscrupulous and noisy minority. They will rally effectively for the support of order, and assist the Government effectively in the measures it takes to suppress crime."

"Gentlemen, I have to take leave of you to-day. I have always recognised the members of my Council as my colleagues: my relations with them have always been frank and friendly. I part from them with great regret. I wish the Council itself, and every member of it, all happiness and prosperity; and I can assure you that I shall always remember with pleasure our work together in this Council Chamber."

The Council was then adjourned to a date to be announced hereafter.

CALCUTTA;

The 1st December, 1908.

F. G. WIGLEY,

Secretary to the Bengal Council.



The Calcutta Gazette

EXTRAORDINARY.

SATURDAY, SEPTEMBER 5, 1908.

PART IV.

Bills of the Bengal Council.

GOVERNMENT OF BENGAL.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Chota Nagpur Tenancy Bill, 1908, together with the Bill as amended by the Committee, is, by order of the President published for general information.

F. G. WIGLEY,
Secretary to the Bengal Council.

THE CHOTA NAGPUR TENANCY BILL, 1908.

REPORT OF THE SELECT COMMITTEE.

We, the undersigned, Members of the Select Committee appointed to consider the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant and the settlement of rents in Chota Nagpur, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with

(1) Letter from the Revd. J. Hoffmann, S. J. (Paper No. 1)
(2) Letters dated the 4th June, 1908, to the Commissioner of the Chota Nagpur Division and certain Associations, inviting opinions on the Bill. (Papers No. 2)
Letter No. 412, dated the 8th August, 1908, containing opinion by the British Indian Association.
(3) Memorandum No. 1941L.R., dated the 8th August, 1908, from the Commissioner of the Chota Nagpur Division, enclosing an opinion by the Ranchi Landholders' Association. (Papers No. 3)

the Bill as amended by us annexed thereto.

2. We have made several amendments in the Bill, all the more important of which are mentioned in the following paragraphs.

3. *Clause 1.*—We have struck out the words "and Settlement" in the short title of the Bill, for the reason that a short title should be as short as it can conveniently be made.

4. *Clause 2.*—We have inserted a provision enabling the Local Government to exempt any Municipal area from the provisions of the Act. In doing so we have followed the precedent of the Bengal Tenancy Act, as amended by Bengal Act I of 1907 and Eastern Bengal and Assam Act I of 1908.

5. *Clause 3.*—We have defined "forest-produce," in much the same manner as has been done in the Indian Forest Act, 1878.

6. *Clause 7.*—We have added a proviso to declare that khunt-katti rights shall not be recognised, except in cases where the raiyat and his predecessors in title have obtained their lands by inheritance. We have also safeguarded the rights of persons who may have acquired a title to such tenancies before the commencement of the new Act.

7. *Clause 11.*—We have struck out of sub-clause (1) the words "mortgage" and "or otherwise", so as to require the registration of such transfers only as effect a complete change of ownership.

8. *Clause 13.*—A provision has been inserted for the protection of the rights of village headmen in their offices and lands on the resumption of resumable tenures.

9. *Clause 16.*—We have amended the provisions of the Bill which give the status of settled raiyats to Bhuinhars and Mundari khunt-kattidars, so as to make it incumbent upon such tenants to prove twelve years' continuous occupation of lands in the village before they can claim the status of a settled raiyat.

10. *Clause 17.*—We have expressly excluded landlords' privileged lands from the operation of this clause, and have excised sub-clause (2), as being unnecessary.

11. *Clause 18.*—We have altered the wording of the proviso to sub-clause (3) so as to make it clear what particular class only of tenure-holders can acquire occupancy-rights by custom.

12. *Clause 25.*—An addition has been made to clause 25 (b) to declare that enhancements authorised by clause 61B, clause 93 or clause 98A may be made by the Deputy Commissioner acting under clause 27.

13. *Clauses 34A to 34C* of the Bill as introduced have been omitted, and an addition has been made to the proviso to clause 34 (2), with the object of making clauses 33 and 34, as to reduction of rent, cover also the case of decrease of rent in respect of decrease in area.

14. *Clauses 34D and 61B.*—Ordinarily, rents enhanced, reduced or commuted are not to be subject to alteration for a period of fifteen years. We have provided, however, that this rule shall not hold in the case of a general settlement of rents under Chapter XII of the Bill, or in the special circumstances mentioned in clause 34D.

15. *Clause 37.*—We have made two additions to clause 37, *first*, to provide for enhancements of rent in the case of khunt katti holdings over twenty years old, on the basis of a written contract entered into at the commencement of the tenancy; and, *secondly*, to declare that the special rights of a khunt-katti raiyat shall extend only to his khunt-katti lands, and not to other lands cultivated by him.

16. *Clause 49.*—In sub-clause (a) we have declared that sub-clause (2) of clause 47 shall not apply to Bhuinhars, because they have, up to the present time, had a right to sell their rights in their tenures without any consent of their landlords. We have also altered the date "1st January, 1908" to "1st October, 1908", because it is undesirable to invalidate transfers which have taken place between those dates.

17. *Clause 50.*—An addition has been made to this clause, specifically authorising Bhuinhars to sell their lands, with the sanction of the Deputy Commissioner, for building purposes.

18. *Clause 51.*—We have added a sub-clause empowering the Deputy Commissioner to give possession of the land to the landlord when the tenant refuses to accept payment for it.

19. *Clause 56.*—We have struck out the words "within three months from the date on which such rent became due," so as to authorise a tenant to deposit rent in Court at any time, as under section 61 of the Bengal Tenancy Act, 1885.

We have also struck out sub-clause (2) of clause 56, in view of the alteration which we have made in the first line of clause 58.

20. *Clause 57.*—We have made an alteration to admit of rent deposited by a tenant in Court being repaid to him after a shorter period than three years when the circumstances render that course expedient.

21. *Clause 58.*—The wording of this clause has been altered to make it clear that when once a deposit of rent has been accepted by a Deputy Commissioner, any suit to recover rents due up to the time of the deposit must be brought within six months of the service of the notice on the landlord.

22. *Clause 59.*—We have altered the wording of the proviso to this clause, so as to make it clear that what is intended is that a raiyat paying his rent in full within the year in which it accrues due shall not be called upon to pay interest in excess of $6\frac{1}{2}$ per cent.

We have also made an addition to this clause, to the effect that interest on overdue cesses shall not be decreed at a lower rate than that specified in the Cess Act (i.e., $12\frac{1}{2}$ per cent.).

23. *Clause 61.*—The wording of this clause has been altered, and it is now laid down that the rent of a tenancy is a first charge thereon, but that a purchaser of a tenancy in execution of a decree for arrears of rent cannot be made liable for arrears that accrued due before his purchase.

24. *Clause 61A.*—We have amended this clause, which relates to the commutation of rents payable in kind, in two ways, *first*, by making the clause apply to tenure-holders as well as occupancy-raiyats, and, *secondly*, by adding a proviso that, in these proceedings, Revenue-officers shall have regard to the special circumstances (if any) which gave rise to the assessment of the present rent.

25. *Clause 63.*—We have excised this clause, as being unnecessary.

26. *Clause 66.*—We have amended this clause by providing that, where a Deputy Commissioner orders the ejectment of a cultivator from korkar, he may award reasonable compensation to the cultivator, if he thinks it necessary to do so.

27. *Clause 68.*—We have amended this clause in order to indicate that only a raiyat who reclaims korkar is entitled to occupancy-rights in the same under the clause.

28. *Clause 70A* is new. It follows section 155 of the Bengal Tenancy Act, 1885, and provides that where a suit is brought for the ejectment of a raiyat for the reasons mentioned in clause 21 or clause 41 (b) or (c), no ejectment shall be ordered unless the raiyat refuses to remedy the misuse or breach complained of, or to pay reasonable compensation for the same.

29. *Clause 70B* is new. It provides that an ejectment order shall ordinarily be executed at the end of the agricultural year in which it is passed, subject to any special order of the Court if more speedy action is necessary.

30. *Clause 72.*—We have altered the section of Bengal Act I of 1879 which relates to relinquishment, and assimilated it to the provisions of section 86 of the Bengal Tenancy Act, 1885.

31. *Clauses 73 (3), 233 and 234.*—The period of limitation for the recovery of possession of his holding or village by an occupancy-*raiyat* or a village-headman has been reduced from six to three years.

32. *Clause 77.*—We have made an addition to give the Local Government power to declare any provisions of the Bill to apply to *ghatwali* or other service tenures or holdings.

33. *Clause 77A.*—We have inserted this clause to meet the case of homestead lands occupied by a *raiyat* otherwise than as part of his holding. It is based on section 182 of the Bengal Tenancy Act, 1885.

34. *Clause 78 (2).*—We have altered the date 1907 to 1903, following the precedent established by the Bengal Tenancy Act.

35. *Clause 84.*—We have amended this clause in two important points. *First*, we have indicated that ordinarily the settlement of fair rents shall take place after final publication of the record. In this respect, we have followed the Bengal Tenancy Act, 1885. *Secondly*, we have provided that a Revenue-officer may settle fair rents of his own motion only if specially directed by the Local Government to do so.

36. *Clause 86.*—We have added two proviso, taken from section 106 of the Bengal Tenancy Act, 1885, with the object of safeguarding the interests of parties.

37. *Clause 93.*—We have added words to make it clear that no demand for rent in respect of an occupancy holding in excess of the rent recorded by a Settlement-officer shall be entertained in any Court, except as provided in this Chapter or in clause 31.

38. *Clause 95.*—We have excised this clause entirely from the Bill. We are agreed that, in the cases referred to in the clause, local inquiries are eminently desirable, and that it is often impossible for Subordinate Judges, Munsifs and Deputy Collectors employed at head-quarters to make such inquiries. We think, however, that injustice may be avoided, without subordinating decrees of Civil or Revenue Courts to subsequent decisions of Settlement-officers, if the Local Government appoints selected officers for the trial of these suits in areas under settlement. Such officers, having more time at their disposal, would be in a position to make local inquiries whenever necessary, and could also try cases locally if this be desired—*vide* sub-section (4) of section 36 of the Civil Courts Act (XII of 1887). The Local Government has already the power to invest any officer with the powers of a Civil Court in Chota Nagpur, under sub-section (1) of the section just mentioned. In these circumstances, the retention of clause 95 appears to be unnecessary.

39. *Clause 98A* is new. We have inserted it in order to admit of the enhancement of rents on the application of landlords in cases in which the Government may be unwilling to direct a general revision of a record-of-rights.

40. *Chapter XIV (landlords' privileged lands).*—We have re-cast several of the provisions of this Chapter. Under clause 117, as it originally stood, no lands could be recognised as landlords' privileged lands unless the same had been entered in a register prepared by a Revenue-officer acting under this Chapter. This provision has been excised. We have provided, however, in clause 120A, that, when a question arises in any Court as to whether lands are or are not landlords' privileged lands, the Court shall presume, until the contrary is proved, that the lands are not lands of that special character.

We have also inserted, in clause 120, a list of some of the details to which a Revenue-officer, acting under this Chapter, must have regard in inquiries relating to landlords' privileged lands; and we have provided in that clause that no judgment of a Civil Court, or of the Court of a Deputy Commissioner, shall be conclusive proof, in any inquiry under this Chapter, that land is landlord's privileged land.

We have also provided, in clause 121A, that when once a complete record of landlords' privileged lands is prepared in any area, no additional lands shall at any future time be recognised as lands of that character.

41. *Clause 123.*—We have amended sub-clause (b) of this clause so as specifically to make it include headmen of groups of villages. We have also

added an Explanation to the clause, to indicate that the words "rights of a village headman" include a right to hold his office.

42. *Clause 134.*—We have excised sub-clause (5) of this clause, because we consider that it is inexpedient to allow cases of the nature therein mentioned to be tried by Revenue Courts. We have also amended sub-clause (6), making it somewhat more comprehensive.

43. *Clauses 150, 152, 153 and 154* have been omitted, as we do not think it necessary to adopt in rent suits such a severe form of procedure as they provided.

44. *Clause 156* has been amended so as to follow section 102 of the Code of Civil Procedure, 1882.

45. *Clause 172.*—We have made it obligatory upon the Deputy Commissioner, when he makes a local inquiry under this clause, to make, without delay, a note of relevant facts which he has observed.

46. *Clause 182A* is new. It declares that, ordinarily, a decree shall be executed by the Court which made it. It is proposed to provide by rules for cases where this is not possible.

47. *Clause 182B* is new. It provides for the presentation of applications for execution in proper form and verified, and is based on section 235 of the Code of Civil Procedure, 1882.

48. *Clause 183B* is new. It adds to the existing law by declaring certain properties to be exempt from attachment in execution, and follows section 266 of the Code of Civil Procedure, 1882.

49. *Clause 198.*—We have made an addition to this clause, authorising the sale of perishable property in a shorter period than ten days.

50. *Clause 203.*—We have amended the latter part of this clause, so as to leave it to the Local Government to make rules for the disposal of the sale proceeds of moveable property attached in execution.

51. *Clause 207, sub-clause (2) (b).*—We have amended this sub-clause so as to require that all sales in execution against immoveable property under clause 207 shall be made in accordance with selected provisions of the Code of Civil Procedure, 1882.

52. *Clause 211.*—We have added a proviso to this clause, prohibiting any application under the same when an application under clause 210 has been filed.

53. *Clause 219A.*—We have provided, on the lines of section 560 of the Code of Civil Procedure, 1882, for the re-hearing of an appeal heard *ex parte* in the absence of a respondent.

54. *Clause 221, sub-clause (2).*—We have made an addition to this sub-clause, to allow a second appeal to the High Court, in certain circumstances, from orders passed by the Judicial Commissioner in appeals in execution proceedings.

55. *Clause 222.*—Under the existing law, when, in analogous cases, some appeals lie to the Deputy Commissioner and others to the Judicial Commissioner, the Judicial Commissioner has power to transfer to his own file the appeals pending in the Deputy Commissioner's Court. To save inconvenience and expense, we propose, by an addition to clause 222, to allow appellants, in such analogous cases, in certain circumstances to file their appeals in the Court of the Judicial Commissioner, although the same should ordinarily be filed in the Court of the Deputy Commissioner.

56. *Clause 244.*—We have made an addition to this clause, to admit of the recovery of rent due to a landlord from a Mundari khunt-kattidar in the manner in which money due to the Government from a Mundari khunt-kattidar may be recovered.

57. *Clause 244A.*—We have made provision here for the recovery of sums due to a Mundari khunt-kattidar, by his co-sharers, on account of rent paid to a superior landlord.

58. *Clauses 258A and 258B.*—We have made provision here for the realisation and apportionment of costs incurred in proceedings under the Act.

59. *Clause 255.*—We have excised this clause, because we are of opinion that it would cause the greatest inconvenience and expense to the executants of documents, without any compensating advantages.

60. *Clause 257.*—We have made an addition to this clause, directing that, until rules are issued under sub-clause (1) of the same, certain sections of the Code of Civil Procedure, 1882, which are now in force under Bengal Act I of 1879, shall continue to be applicable to proceedings under the new law.

We have also inserted a sub-clause providing for the repeal of provisions of the Bill which may be superseded by provisions of the Code of Civil Procedure which are applied by rule made under sub-clause (1).

61. *Clause 260.*—We have amended this clause so as to make costs and interest in rent suits, and damages under clause 176, recoverable as if they were arrears of rent.

62. We recommend that the Bill, as now amended, be published in the Calcutta Gazette, and that it be taken into consideration by the Council on the 19th September.

W. H. VINCENT.

R. T. GREER.

F. W. DUKE.

H. C. STREATFEILD.

KALI PADA GHOSH.

BIJAY CHAND MAHTAB.

DEBA PRASAD SARBADHIKARI.

The 4th September, 1908.

THE CHOTA NAGPUR TENANCY BILL,
1908,

AS AMENDED BY THE SELECT COMMITTEE.

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THE CHOTA NAGPUR TENANCY BILL, 1908;

AS AMENDED BY THE SELECT COMMITTEE.

[*NOTE.—I.*—Provisions of the existing law on which the several clauses of the Bill are based are noted, within square brackets, on the right-hand margin of the Bill. In these notes,—

“1879” means the official edition of Ben. Act I of 1879 (the Chota Nagpur Landlord and Tenant Procedure Act), as modified up to the 1st March, 1904;

“1885” means the official edition of Act VIII of 1885 (the Bengal Tenancy Act, 1885), as modified up to the 31st May, 1907;

“1897” means the official edition of Ben. Act IV of 1897 (the Chota Nagpur Commutation Act, 1897), as modified up to the 30th September, 1908; and

“Notfn.” means Notification No. 1379L.R., dated the 5th March, 1908, by which portions of the Bengal Tenancy Act, 1885 (as amended by Bengal Acts III of 1898 and I of 1907), were extended to the Chota Nagpur Division except the district of Manbhum.

II.—Substantive amendments which it is proposed to make in the existing law are, as far as possible, printed in antique type, and amendments made in the Bill by the Select Committee are, as far as possible, marked with lines.]

A
BILL

to amend and consolidate certain enactments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rents in Chota Nagpur;

And whereas the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to ^{65 & 66 Vict.} o. 14.

It is hereby enacted as follows:

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Chota Nagpur Tenancy <sup>[1879, s. 1.
1885, s. 1.
1897, s. 1.]</sup> Act, 1908;

(2) It extends to the Chota Nagpur Division, except the district of Manbhum and except any area or part of an area which is constituted a municipality under the Bengal Municipal Act, 1884, and which is specified in this behalf by notification issued by the Local Government; and

(3) The Local Government may, by notification, extend the whole or any portion of this Act to the said district of Manbhum or to any part thereof.

Repeal.

2. (1) The Acts and notification specified in Schedule A are hereby repealed in the Chota Nagpur Division, except the district of Manbhum.

(2) When this Act is extended to the district of Manbhum <sup>[o. 1885, s. 2.
(2).]</sup> or any part thereof, the Acts specified in Schedule B shall be deemed to be repealed in that district or part, as the case may be; or, if only a portion of this Act is so extended, then so much of the said Acts as is inconsistent with that portion shall be deemed to be so repealed.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(i) “agricultural year” means the year prevailing in a local area for agricultural purposes, and shall be deemed to commence and terminate on such dates, respectively, as the Local Government may, by notification, direct;

(ii) “Bhugut bandha mortgage” means a transfer of the interest of a tenant in his tenancy, for the purpose of securing the payment of money advanced or to be advanced by way of loan, upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the tenancy during the period of the mortgage;

(iii) “Board” means the Board of Revenue for Bengal;

(iv) “Certificate Officer” means the Certificate Officer as defined in clause (2) of section 4 of the Public Demands Recovery Act, 1895;

(v) “civil jail” means the civil jail of the district, and includes any place appointed by the Local Government for the confinement of prisoners under this Act;

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(Chapter I.—Preliminary.—Clause 3.)

(vi) "Commissioner" and "Judicial Commissioner" mean [1879, s. 2.]

respectively the Commissioner and Judicial Commissioner of Chota Nagpur; and include any other person specially empowered by the Local Government to discharge the functions of the Commissioner or Judicial Commissioner, as the case may be, in any particular area;

(vii) "Deputy Collector" includes an Assistant Collector [1879, s. 2.]

or any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Collector under this Act;

(viii) "Deputy Commissioner," in any provision of this Act, includes—

(a) any Revenue-officer or Deputy Collector who is [1879, s. 2(e).]
[1886, s. 8 (16).]
specially empowered by the Local Government to discharge any of the functions of a Deputy Commissioner under that provision; and(b) any Deputy Collector to whom the Deputy [1879, s. 133.]
Commissioner may, by general or special order, transfer any of his functions under that provision;(viii a) "enhancement" and "enhanced" do not include [1879, s. 133.]
an increase of rent in respect of land held by a raiyat in excess of the area for which rent has previously been paid by him, or in respect of the conversion of upland, whether within or without his holding, into korkar; but include any commutation of rent payable in money into rent payable wholly or partly in kind;(ix) "estate" means land included under one entry in [1885, s. 3(1).]
& Notfn.] any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Deputy Commissioner, and includes Government khas mahals and revenue-free lands not entered in any register;

(ix a) "forest-produce" includes—

(a) the following, whether taken from a forest or not, that is to say:—

(i) wood, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams,

(ii) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(iii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iv) wild animals, and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(v) peat, surface-soil, rock and minerals (including iron-stone, coal, clay, sand and limestone, when taken by any person for his own use);

(x) "holding" means a parcel or parcels of land held by a [1879, s. 2(d).]
raiyat and forming the subject of a separate [1886, s. 3(9).]
tenancy;

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(Chapter I.—Preliminary.—Clause 3.)

(xi) "Korkar" means land, by whatever name locally known, such as babbala, khandwat, jalsaan or ariat, which has been artificially levelled or embanked primarily for the cultivation of rice, and—

- (a) which previously was jungle, waste or uncultivated, or was cultivated upland, or which, though previously cultivated, has become unfit for the cultivation of transplanted rice, and
- (b) which has been prepared for cultivation by a cultivator (other than the landlord), or by his predecessor in interest (other than the landlord), with or without the consent of the landlord according as such consent is required or not by section 64;

(xii) "landlord" means a person immediately under whom a tenant holds, and includes the Government; [1879, s. 2(e).
1885, s. 3(4).]

(xiii) "moveable property" includes standing crops; [1879, s. 2(f).]

(xiv) "Mundari khunt-kattidari tenancy" means the interest of a Mundari khunt-kattidari; [1879, s. 2(h).]

(xv) [Omitted.]

(xvi) "pay", "payable" and "payment", when used with reference to rent, include "deliver," "deliverable" and "delivery"; [1885, s. 3
(6).]

(xvii) "permanent tenure" means a tenure which is heritable, and which is not held for a limited time; [1885, s. 3
(8).]

(xviii) "pisdial conditions" mean conditions or services appartenant to the occupation of land, other than the rent; and include rakumats payable by tenants to landlords, and every mahtut, mangan and madad, and every other similar demand, howsoever denominated, and whether regularly recurrent or intermittent; [1897, s. 3 (1).
(b)(c).]

(xix) "prescribed" means prescribed by the Local Government by rule made under this Act; [1885, s. 3 (1).
& Notfn.]

(xx) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate; [1885, s. 3(2).
& Notfn.]

(xxi) "registered" means registered under any Act for the time being in force for the registration of documents; [1879, s. 2(k).
1885, s. 3(3).]

(xxii) "rent" means whatever is lawfully payable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant; and includes all dues (other than personal services) which are recoverable under any enactment for the time being in force as if they were rent; [1879, s. 2(l).
1885, s. 3(5).]

(xxiii) "resumable tenure" means a tenure which is held subject to the condition that it shall lapse to the estate of the grantor and be resumable by him or his successor in title—

- (a) on failure of male heirs of the body of the original grantee in the male line, or
- (b) on the happening of any definite contingency other than that referred to in sub-clause (a) of this clause;

(xxiv) "Revenue-officer", in any provision of this Act, means any officer whom the Local Government may appoint to discharge any of the functions of a Revenue-officer under that provision; [1885, s. 3(17).
& Notfn.]

(xxv) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person; [1879, s. 2(m).
1885, s. 3(3).]

(xxvi) "tenure" means the interest of a tenure-holder, and includes an under-tenure, but does not include a Mundari khunt-kattidari tenancy; and [1879, s. 2(o).
1885, s. 3(7).]

(xxvii) "village" means,—

- (a) in any local area in which a survey has been made and a record-of-rights prepared under any enactment for the time being in force, the area included within the same exterior [1885, s. 3
(70).]

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boundary in the village map finally adopted in making such survey and record, as subsequently modified by the decision (if any) of a Court of competent jurisdiction, and

(b) where a survey has not been made and a record-of-rights has not been prepared under any such enactment, such area as the Deputy Commissioner may, with the sanction of the Commissioner, by general or special order, declare to constitute a village.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

(1) tenure-holders, including under-tenure-holders,
(2) raiyats, namely:—

(a) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them,
(b) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy, and
(c) raiyats having khunt-kattli rights;

(3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats, and

(4) Mundari khunt-kattidars.

Meaning of "tenure-holder." 5. "Tenure-holder" means primarily a person who has acquired from the proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it; and includes—

(a) the successors in interest of persons who have acquired such a right, and
(b) the holders of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869;

but does not include a Mundari khunt-kattidar.

Meaning of "raiyat." 6. (1) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners; and includes the successors in interest of persons who have acquired such a right, but does not include a Mundari khunt-kattidar.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(2) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari khunt-kattidar.

(3) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(a) local custom, and
(b) the purpose for which the right of tenancy was originally acquired.

Meaning of "raiyat having khunt-kattli rights." 7. (1) "Raiyat having khunt-kattli rights" means a raiyat in occupation of, or having any subsisting title to, land reclaimed from jungle by the original founders of the village or their descendants in the male line, when such raiyat is a member of the family which founded the village or a descendant in the male line of any member of such family:

Provided that no raiyat shall be deemed to have khunt-kattli rights in any land unless he and all his predecessors in title have held such land or obtained a title thereto by virtue of inheritance from the original founders of the village.

(2) Nothing in this Act shall prejudicially affect the rights of any person who has lawfully acquired a title to a khunt-kattidari tenancy before the commencement of this Act.

The Chota Nagpur Tenancy Bill, 1908.(Chapter II.—*Classes of Tenants.*—Chapter III.—*Tenure-holders.*—Clauses 8—12A.)Meaning of
"Mundari khunt-
kattidar."

8. "Mundari khunt-kattidar" means a Mundari who has [1879, s. 2(g).] acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes—

- (a) the heirs male in the male line of any such Mundari, when they are in possession of such land or have any subsisting title thereto, and
- (b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

CHAPTER III.**TENURE-HOLDERS.**Tenure-holder
when not liable to
enhancement of
rent.

9. No tenure-holder who holds his tenure (otherwise than [1879, s. 18.] under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in the Bengal Decennial Settlement Regulation, 1793, section 51, or in any other law, to VIII of 1798, the contrary notwithstanding.

Certain bhuinhars
not liable to enhance-
ment of rent.

10. No bhuinhar whose lands are entered in any [1879, s. 19, para. 1.] register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, shall be liable to any enhancement of the B.n. Act II of 1869.

Registration
of certain transfers
of tenures.

11. (1) When any tenure or portion thereof is transferred by [1879, s. 34.] of succession, inheritance, sale, gift or exchange, the transferee or his successor in title shall cause the transfer to be registered in the office of the landlord to whom the rent of the tenure or portion is payable.

(2) The landlord shall, in the absence of sufficient reason to the contrary, allow the registration of all such transfers.

(3) Whenever any such transfer is registered in the office of the landlord, he shall be entitled to levy a registration-fee of the following amount, namely:—

(a) when rent is payable in respect of the tenure or portion—a fee of two per centum on the annual rent thereof: provided that no such fee shall be less than one rupee or more than one hundred rupees, and

(b) when rent is not payable in respect of the tenure or portion—a fee of two rupees.

(4) If an application for the registration of any transfer of a tenure or portion thereof under sub-section (1) is not made within a period of one year from the date of the transfer, and if the registration fee authorized by sub-section (3) is not paid or tendered within that period, the transferee or his successor in title shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him, as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

(5) Nothing in this section shall—

(i) validate a transfer of any tenure or portion thereof which, by the terms upon which it is held, or by any law or local custom, is not transferable, or

(ii) affect the right of the landlord to resume a resumable tenure.

Procedure
refusal of landlord
to allow registration
of transfer of tenure.

12. If any landlord refuses to allow the registration of any [1879, s. 26.] such transfer as is mentioned in section 11, the transferee or his successor in title may make application to the Deputy Commissioner; and the Deputy Commissioner shall thereupon, after causing notice to be served on the landlord, make such inquiry as he considers necessary; and, if no sufficient grounds are shown for the refusal, shall pass an order declaring that the transfer shall be deemed to be registered.

Division of tenure
or distribution of
rent.

12A. Notwithstanding anything contained in section 11 or [1885, s. 88.] section 12, a division of any tenure or portion thereof, or a distribution of the rent payable in respect of any tenure or portion thereof, shall not be binding on the landlord unless it is made with the express consent in writing of the landlord or his agent. [1870, s. 36, prov.]

The Chota Nagpur Tenancy Bill, 1908.(Chapter III.—Tenure-holders.—Chapter IV.—Occupancy-
raiyats.—Clauses 13—16.)

Annullment of in-
sumbrances on re-
sumption of resumable
tenure.

13. (1) Upon the resumption of a resumable tenure, every [1879, s. 36A.] lien, sub-tenancy, easement, or other right or interest created, without the consent or permission of the grantor or his successor in interest, by the grantee or any of his successors, on the tenure, or in limitation of his own interest therein, shall be deemed to be annulled, except the following, namely:—

- (a) any lease of land whereupon a dwelling-house, manufactory or other permanent building has been erected, or a permanent garden, plantation, tank, canal, place of worship or burning or burying ground has been made, or wherein a mine has been sunk under lawful authority;
- (b) any right of a raiyat or cultivator in his holding or land, as conferred by this Act or by any local custom or usage;
- (c) any right to hold land occupied by a sacred grove;
- (d) any Mundari khunt-kattidari tenancy; and
- (e) any right of a headman of a village or group of villages (whether known as a manki or pradhan or manji or otherwise) in his office or land.

(2) Nothing in clause (a) of sub-section (1) shall confer on any grantee of a resumable tenure, or any of his successors, any right over minerals which he does not otherwise possess.

Saving of rights of
landlord.

13A. The mere registration of a transfer under section 11, [1879, s. 34.] or the mere receipt of a registration-fee thereunder, or the passing of an order by the Deputy Commissioner under section 12, shall not be deemed to imply a consent to, or permission to make, the transfer, within the meaning of section 13; and the landlord shall not be bound by the terms or conditions of any such transfer.

CHAPTER IV.

OCCUPANCY-RAIYATS.

General.

Continuance of
existing occupancy
rights.

14. Every raiyat who, immediately before the commencement of this Act, has, by the operation of any enactment, or by local custom or usage or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years. [1885, s. 19 (1).]

Definition
"settled raiyat." or 15. (1) Every person who, for a period of twelve years, [1879, s. 6, para. 1, 2, 5, 1885, s. 20.] whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyat holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for three years thereafter.

(6) If a raiyat recovers possession of land under section 71, or by suit, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than three years.

*The Chota Nagpur Tenancy Bill, 1908.**(Chapter IV.—Occupancy-riayats.—Clauses 16—18.)*

(7) If, in any suit or proceeding, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Bhuinhare and Mundari khunt-kattidars to be settled raiyats in certain cases.

18. The following classes of persons shall be deemed to be settled raiyats for the purposes of this Act, in regard to the land in their villages which they cultivate as raiyats (other than their own Bhuinhari or Mundari khunt-kattidari land, and other than landlords' privileged lands as defined in section 117), and the provisions of sub-sections (4), (5) and (6) of section 15 shall apply to such persons, namely:—

(a) where any land in a village, other than land known as manjhijas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,—all members of any Bhuinhari family who hold, and have for twelve years continuously held, land in such village, and

Ben. Act II of 1869.

(b) where any village contains land not forming part of a Mundari khunt-kattidari tenancy, and an entry of Mundari khunt-kattidari tenancies or of Mundari khunt-kattidars in such village has been made in any record-of-rights as finally published under this Act or under any law in force before the commencement of this Act—all male members of any Mundari khunt-kattidari family who hold, and have for twelve years continuously held, land in such village.

Settled raiyats to occupancy rights.

17. (1) Every person who is a settled raiyat of a village within the meaning of section 15 or section 16 shall have a right of occupancy in all land (other than landlords' privileged lands as defined in section 117) for the time being held by him as a raiyat in that village.

*1879, s. 6.
para. 1;
1886, s. 21.]*

(2) *(Omitted.)*

Effect of acquisition of occupancy-right by landlord.

18. (1) When the immediate landlord of an occupancy holding is a proprietor or a permanent tenure-holder, and the entire interest of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall not retain a right of occupancy in the holding, but shall hold the same as a proprietor or permanent tenure-holder, as the case may be; but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If an occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; and, if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

Illustration.—A, a co-sharer landlord, purchases the occupancy holding of a raiyat X. A is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. A sub-lets the land to Y, who takes it for the purpose of establishing tenants on it; Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z, who takes it for the purpose of cultivating it himself; Z becomes a raiyat in respect of the land.

(3) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, ijaradar or farmer of rents or as a mortgagee in possession shall not, during the period of his lease or mortgage, acquire by purchase or otherwise a right of occupancy in any land comprised in his lease or mortgage:

Provided that nothing in this sub-section shall prohibit the acquisition of occupancy-rights by any village-headman (whether known as pradhan or manjhi or otherwise) who by local custom or usage has a right to acquire the same.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijaradar or farm.

(4) *(Omitted.)*

The Chota Nagpur Tenancy Bill, 1908.

(Chapter IV.—Occupancy-riayats.—Clauses 19—25.)

*Incidents of occupancy-right.**Rights of occupancy-riayat in respect of use of land.*

19. When a raiyat has a right of occupancy in respect [1885, s. 25.] of any land, he may use the land—

(a) in any manner which is authorized by local custom

or usage, or

(b) irrespective of any local custom or usage, in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.*Protection of occupancy-riayat from eviction except on specified grounds.*

21. An occupancy-riayat shall not be ejected by his [1885, s. 25.] landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which is not authorized by section 19, or

(b) that he has broken a condition, consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy-right on death.

22. If a raiyat dies intestate in respect of a right of [1885, s. 26.] occupancy, it shall, subject to any local custom to the contrary, descend in the same manner as other immovable property :

Provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Obligation of occupancy-riayat to pay rent.

22A. An occupancy-riayat shall pay rent for his holding at [1879, s. 8, para. 1, 1885, s. 24.] a fair and equitable rate.

Presumption as to fair and equitable rent in case of occupancy-riayat.

23. The rent for the time being payable by an occupancy- [1879, s. 6, para. 2, 1885, s. 27.] raiyat shall be presumed to be fair and equitable until the contrary is proved.

Confirmation of rents enhanced prior to commencement of this Act.

24. When the rent of an occupancy-riayat whose rent is liable to enhancement has been enhanced before the commencement of this Act, otherwise than under section 24 of the Chota Nagpur Landlord and Tenant Procedure Act, such enhanced rent shall be deemed to be lawfully payable—

[Ben. Act 1 of 1879.]

(a) if it has been actually paid continuously for seven years before the commencement of this Act; and

(b) if it is not proved to be unfair and inequitable:

Provided that, where the rent lawfully payable by an occupancy-riayat for his holding has been made an issue in any suit for arrears of rent, and the Court has arrived at a finding on that issue, the rent so found shall be deemed to be lawfully payable by the raiyat for the holding.

Methods by which rent of occupancy-riayat may be enhanced.

25. (1) From and after the commencement of this Act,—

(a) in any area for which a record-of-rights has not [1879, s. 21, 22, 1885, s. 28.] been prepared and finally published under this Act or under any law in force before the commencement of this Act, or for which an order has not been issued under this Act or under any law in force before the commencement of this Act for the preparation of such a record, the money-rent of an occupancy-riayat whose rent is liable to enhancement may be enhanced only by order of the Deputy Commissioner passed under section 27; and

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(Chapter IV.—Occupancy-riayats.—Clauses 26, 27.)

(b) in any area for which a record-of-rights has been prepared and finally published as aforesaid, or for which an order has been issued as aforesaid for the preparation of such a record, the money-rent of an occupancy-riayat whose rent is liable to enhancement may be enhanced only,—

(i) in cases referred to in section 61B, section 93 or section 98A, by order of the Deputy Commissioner passed under section 27, and

(ii) in other cases, by order of a Revenue-officer passed under Chapter XII.

(2) No enhancement of such rent made after the commencement of this Act in any manner other than that referred to in clause (a) or clause (b), as the case may be, whether by private contract or otherwise, shall for any reason be recognized or given effect to in any suit or proceeding in any Court.

Contents of application to Deputy Commissioner for enhancement.

26. (1) Every application to the Deputy Commissioner for [1879, ss. 22 the enhancement of the rent of an occupancy holding shall 23.] specify:—

(a) such particulars as may be prescribed regarding the area, situation, local names, quality and boundaries of the parcels of land constituting the holding;

(b) the rates of rent (if any) payable by the raiyat for the different classes of land constituting the holding, and the yearly rent lawfully payable for the holding at the date of the application;

(c) the rates (if any) generally prevailing in the village for corresponding classes of land;

(d) the date (as nearly as it can be ascertained) when the rates of rent generally prevailing were last adjusted in the village;

(e) the rates which the applicant desires to claim; and

(f) the grounds on which the applicant considers that he is entitled to the enhancement claimed;

(2) Sections 142 to 145 shall apply to every application made under this section.

Procedure on receipt of such application.

27. (1) When any such application has been received, the [1879, ss. 24.] Deputy Commissioner—

(a) shall forthwith give notice of the contents thereof to the raiyat, and

(b) may, if he thinks fit, order a measurement of the land, and

(c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat, by order, fix such enhanced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable:

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(Chapter IV.—Occupancy-riayats.—Clauses 28—30.)

Provided that no enhancement shall be ordered except [u. P. Act II of 1891, s. 43(1).] on one or more of the following grounds, namely,—

- (i) that the rate of the rent paid by the raiyat is below the prevailing rate paid by occupancy-riayats for land of similar quality and with similar advantages;
- (ii) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (iii) that the productive powers of the land held by the raiyat have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the raiyat:

Provided also that no enhancement shall be ordered [1888, s. 36.] which is, under the circumstances of the case, unfair or inequitable:

Provided, further, that all enhancements shall be limited in the prescribed manner (if any).

(2) The rent as fixed or varied under sub-section (1) shall be payable by the said raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of a raiyat to claim at any time under section 33 a reduction of the rent previously paid by him.

Power to direct gradual enhancement. 28. Where the Deputy Commissioner considers that the [1888, s. 36.] immediate enforcement of the full enhancement ordered under section 27 is likely to be attended with hardship, he may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the full enhancement has been reached.

29. (Transferred to clause 3.)*Increase of Rent in respect of Excess Area.*

Application for increase of rent in respect of land held in excess of the area for which rent was previously paid. 30. (1) Where land is held by an occupancy-riayat in [or, 1888, s. 52] excess of the area for which rent has previously been paid by him, no increase shall be made to the rent payable by him, except by order of a Revenue-officer passed under Chapter XII or by order of the Deputy Commissioner passed on an application made to him by the landlord.

(2) Every such application shall specify—

- (a) the yearly rent payable by the raiyat at the date of the application,
- (b) the area and description of the land for which the said rent is payable,
- (c) the proceedings (if any) by which the said rent was fixed,
- (d) the general rate prevailing in the village for corresponding classes of lands,
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village,
- (f) the area and description of the land held in excess of the area for which rent has previously been paid, and in respect of which an increase of rent is claimed,

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(g) the amount of the said increase,

(h) the manner in which the said increase has been, or should be, assessed, and

(i) any other prescribed particulars.

(3) If a survey and record-of-rights have been made under this Act, or under any other law in force before the commencement of this Act, in respect of any land referred to in clause (b) or clause (f) of sub-section (2), the "area and description" required by those clauses, respectively, shall be specified by stating the plot number, area and class of each field included in the land, as shown by such survey and record.

(4) Sections 142 to 145 shall apply to every application made under this section.

Procedure on receipt of such application. 31. (1) When any such application has been received, [c. 1886, s. 62.] the Deputy Commissioner—

(a) shall forthwith give notice of the contents thereof to the *raiyat*,

(b) shall refer to the entry (if any) relating to the tenancy in the record-of-rights prepared under this Act or any other law for the time being in force,

(c) may, if he thinks fit, order a measurement of the land held by the *raiyat*, and

(d) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the *raiyat* and making such further inquiry as the Deputy Commissioner may think necessary, order such an increase, whether progressive or otherwise, as he may consider to be fair and reasonable :

Provided that an increase of rent shall not be ordered where it would contravene any local custom or usage prohibiting an increase of rent in respect of the increase in area of a holding.

(2) When any increase has been so ordered, it shall be payable from the commencement of the agricultural year following that in which the order is passed, and may be recovered from the *raiyat* in any suit instituted against him for arrears of rent.

Savings.

32. Nothing in sections 30 and 31 shall prohibit a landlord from realizing—

(a) increased rents from a *raiyat* for separate parcels of land settled with him in any manner authorized by law, or

(b) rents on lands converted from upland into korkar in accordance with local custom or usage.

Reduction of Rent.

Application to Deputy Commissioner for reduction of rent.

33. (1) Any occupancy-*raiyat* wishing to claim a reduction of the rent previously paid by him may present an application to the Deputy Commissioner to assess the rent on the land in respect of which such reduction is sought and (if necessary) to measure the land. [1879, s. 27.]

(2) Every such application shall specify—

(a) the yearly rent payable by the *raiyat* at the date of the application;

(b) the area and description of the land for which the said rent is payable;

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(Chapter IV.—Occupancy-riayats.—Clauses 34-34D.)

- (c) the proceedings (if any) by which the said rent was fixed;
- (d) the general rate prevailing in the village for corresponding classes of lands;
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the amount of reduction claimed;
- (g) the grounds on which such reduction is claimed; and
- (h) any other prescribed particulars.

(3) Sections 142 to 145 shall apply to every application made under this section.

Procedure on receipt of such application. 34. (1) When any such application has been received, the [1879, s. 28.] Deputy Commissioner—

- (a) shall forthwith give notice of the contents thereof to the landlord, and
- (b) may, if he thinks fit, order a measurement of the land and
- (c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the landlord, by order, fix such reduced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable :

Provided that no reduction shall be ordered except on [1885, s. 39.] one or other of the following grounds, namely,—

- (i) that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;
- (ii) that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent;
- (iii) that the land held by the raiyat is of less area than the area for which rent has previously been paid [Cf. 1885, s. 52.] by him.

(2) The rent as so fixed or varied shall be payable by the raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of the landlord to claim at any time an enhancement under section 27 of the rent of such raiyat.

34A to 34C. (Omitted.)Bar to further enhancement or reduction of rent.

Bar to further enhancement or reduction of rent where there is no record of rights.

34D (1). When the rent of an occupancy holding in any area referred to in clause (a) of section 25 has been enhanced by order of the Deputy Commissioner passed under section 27, such rent shall not again be enhanced for a period of fifteen years, except—

- (a) by order of the Deputy Commissioner, on the ground of a landlord's improvement, or
- (b) by order of a Revenue-officer passed under Chapter XII.

(2) When the rent of an occupancy holding in any such area has been reduced by order of the Deputy Commissioner under section 33, otherwise than on the ground specified in proviso (iii) to section 34, such rent shall not again be reduced for a period of fifteen years, except—

- (i) by order of the Deputy Commissioner, on one of the grounds specified in proviso (i) and (iii) to section 34, or
- (ii) by order of a Revenue-officer passed under Chapter XII.

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(Chapter V.—Raiyats having Khunt-katti rights.—Chapter VI.—Non-occupancy Raiyats.—Clauses 37—41.)

CHAPTER V.

RAIYATS HAVING KHUNT-KATTI RIGHTS.

Incidents of tenancy
of raiyat having
khunt-katti rights.37. The provisions of this Act relating to occupancy-
raiayats shall apply also to raiyats having khunt-katti
rights:

Provided as follows:—

(a) subject to any written contract made at the time [1870, s. 19.]
of the commencement of his tenancy, the rent
payable by a raiyat having khunt-katti rights,
for land in respect of which he has such rights,
shall not be enhanced if his tenancy of such land
was created more than twenty years before the com-
mencement of this Act; and

(b) when an order is made for the enhancement of the rent
payable, by a raiyat having khunt-katti rights,
for any land in respect of which he has such rights,
the enhanced rent fixed by such order shall not exceed
one-half of the rent payable by an occupancy-raiyat
for land of a similar description and with similar
advantages in the same village.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

Initial rent and
lease of non-occupancy-
raiyat.38. Subject to any local custom or usage, a non- [1879, s. 9,
occupancy-raiyat shall, when admitted to the occupation 1886, s. 12.]
of land, become liable to pay such rent as may be agreed on
between himself and his landlord at the time of his admis-
sion, and shall be entitled to a lease only at such rates and on
such conditions as may be so agreed on.Effect of acquisition
by landlord of the
right of a non-occupancy-
raiyat in his
holding.39. The provisions of section 18 shall apply in the case
of the right of a non-occupancy-raiyat in his holding, in the
same way that they apply to an occupancy-right.Conditions of en-
hancement of rent of
non-occupancy-
raiyat.40. The rent of a non-occupancy-raiyat shall not be [1886, s. 43,
enhanced except by registered agreement or by agreement para. 1.]
under section 42.Grounds on which
non-occupancy-
raiyat may be ejected.41. A non-occupancy-raiyat [shall, subject to the provi- [1879, ss. 3,
sions of this Act, be liable to ejection on one or more of 32A].
1886, s. 44.]
the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy;
- (c) on the ground that he has broken a condition, consistent with this Act, on breach of which he is under the terms of a contract between himself and his landlord, liable to be ejected;
- (d) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (e) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 42, or that the term for which he is entitled to hold at such a rent has expired.

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(Chapter VI.—Non-occupancy Raiyats.—Chapter VII.—Lands exempted from Chapters IV and VI.—Clauses 42—44.)

Conditions of ejectment on ground of refusal to agree to pay a fair and equitable rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the rent which he demands and the raiyat has, within six months before the institution of the suit, refused to execute the agreement. [1885, s. 48 (1) to (9).]

(2) A landlord desiring to tender an agreement to a raiyat under this section may either—

- (a) file it in the office of the Deputy Commissioner, for service on the raiyat, or
- (b) send it to the raiyat direct, either by registered post or by any other means.

(3) When an agreement has been filed under clause (a) of sub-section (2), the Deputy Commissioner shall forthwith cause it to be served on the raiyat in the manner prescribed under section 256 for the service of notices.

(4) When an agreement has been served on a raiyat under sub-section (3), or when it is proved to the satisfaction of the Deputy Commissioner that an agreement has been sent to a raiyat by registered post, or, if sent to him by any other means referred to in clause (b) of sub-section (2), has duly reached him, the agreement shall, for the purposes of this section, be deemed to have been tendered.

(5) If a raiyat on whom an agreement has been served under sub-section (3), or to whom an agreement has been sent under sub-section (2), clause (b), executes it, and within one month from the date of service files it in the office of the Deputy Commissioner, it shall take effect from the commencement of the agricultural year next following.

(6) When an agreement has been executed and filed by a raiyat under sub-section (5), the Deputy Commissioner shall forthwith cause a notice of its being so executed and filed to be served on the landlord.

(7) If the raiyat does not execute the agreement and file it under sub-section (5), he shall be deemed, for the purposes of this section, to have refused to execute it.

(8) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Deputy Commissioner shall determine what rent is fair and equitable for the holding.

(9) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment on the second ground mentioned in clause (e) of section 41, unless he has acquired a right of occupancy.

(10) If the raiyat does not agree to pay the rent so determined, the Deputy Commissioner shall pass a decree for ejectment.

(11) In determining what rent is fair and equitable, the Deputy Commissioner shall have regard to the rents generally paid by non-occupancy-raiyats for land of a similar description and with like advantages in the same village and (if the Deputy Commissioner thinks fit) in adjoining villages.

43. (Transferred to clause 70B.)

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS IV AND VI.

Bar to acquisition of right of occupancy in, and to application of Chapter VI to, landlords' privileged lands and certain other lands.

44. Notwithstanding anything contained in Chapter IV, a right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to,— [1879, s. 6, para 1. 1885, s. 116.]

(a) landlords' privileged lands referred to in clause (a) of section 117, when they are held by a tenant on a

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Clauses 45—48.)*

registered lease for a term of years or on a lease year
by year, or

- (b) landlords' privileged lands referred to in clause (b)
of section 117, or
- (c) land acquired under the Land Acquisition Act, 1894,^{1 of 1894.}
for the Government or any Local Authority or
Railway Company, or land belonging to the
Government within a cantonment, while such land
remains the property of the Government, or of
any Local Authority or Railway Company.

CHAPTER VIII.**LEASES AND TRANSFERS OF HOLDINGS AND TENURES.***Raiyat entitled to a
case.*

45. Every raiyat shall be entitled to receive from his land-^[1879, s. 6.]
lord a lease containing the following particulars, namely:—

- (a) the quantity and boundaries of the land comprised in
his holding; and, where fields have been numbered in
a Government survey, the number of each field;
- (b) the amount of yearly rent payable for such land;
- (c) the instalments in which the rent is to be paid;
- (d) if the rent is payable wholly or partially in kind, the pro-
portion or quantity of produce to be delivered, and
the time and manner of delivery; and
- (e) any special conditions of the lease.

*Landlord entitled to
counterpart engage-
ment.*

46. Whenever a landlord grants a lease to a tenant, or^[1879, s. 10.]
tenders to a tenant a lease such as he is entitled to receive, the
landlord shall be entitled to receive from such tenant a counter-
part engagement in conformity with the terms of the lease.

*Restrictions on
transfer of their
rights by raiyats.*

47. (1) No transfer by a raiyat of his right in his holding^[1879, s. 10B.]
or any portion thereof,—

- (a) by mortgage or lease, for any period, expressed or
implied, which exceeds or might in any possible
event exceed five years, or
- (b) by sale, gift or any other contract or agreement,
shall be valid to any extent:

Provided that a raiyat may enter into a bhugut bandha mort-
gage of his holding or any portion thereof for any period not
exceeding seven years.

(2) No transfer by a raiyat of his right in his holding or any
portion thereof shall be binding on the landlord unless it is made
with his consent in writing.

(3) No transfer in contravention of sub-section (1) shall be
registered, or shall be in any way recognised as valid by any
Court, whether in the exercise of civil, criminal or revenue
jurisdiction.

(4) At any time within three years after the expiration of the
period for which a raiyat has, under this section, transferred his
right in his holding or any portion thereof, the Deputy Commis-
sioner may, in his discretion, on the application of the raiyat, put
the raiyat into possession of such holding or portion in the pre-
scribed manner.

(5) Nothing in this section shall affect the validity of any
transfer (not otherwise invalid) of a raiyat's right in his holding
or any portion thereof made *bond fide* before the first day of
January, 1908.

*Restrictions on sale
of raiyats' rights under
order of Court.*

48. No decree or order shall be passed by any Court for<sup>[1879, s. 10A
(1).]</sup>
the sale of the right of a raiyat in his holding, nor shall any
such right be sold in execution of any decree or order:

Provided as follows:—

- (a) any holding may be sold, in execution of a decree of
a competent Court, to recover an arrear of rent
which has accrued in respect of the holding;
- (b) any holding may be sold, under the procedure provided<sup>Ben. Act 1 of
1895.</sup> by the Public Demands Recovery Act, 1895, for
the recovery of a loan granted for the benefit of

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Clauses 49—51.)*

the holding under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or otherwise by the Local Government; and

(c) nothing in this section shall affect the right to execute a decree for sale of a holding passed, or the terms or conditions of any contract registered, before the first day of January, 1903.

Explanation I.—Where a holding is held under joint landlords, and a decree has been passed for the share of the rent due to one or more, but not all, of them, proviso (a) does not authorise the sale of the holding in execution of such decree.

Explanation II.—Proviso (c) does not render valid any document which is otherwise illegal or invalid, or authorise a Court to take judicial cognizance of any such document.

Restrictions on transfer and sale of Bhuihari tenures.

49. Where any land in a village, other than land known as manjhias or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, then—

Ben. Act II of 1869.

(a) section 47 [except sub-section (2) thereof] and section 48 shall apply also to all members of any Bhuihari family holding land in such village, and to the land so held, as if they were raiyats and holdings, respectively, with the substitution of "the first day of October, 1908" for "the first day of January, 1903," and

(b) if any member of any such family transfers the land so held, or any part thereof, by lease, the lessee shall not acquire a right of occupancy therin.

Transfer of occupancy-holding or Bhuihari tenure for certain purposes.

50. (1) Notwithstanding anything contained in sections 47, 48 and 49, any occupancy-raiyat, or any member of a Bhuihari family who is referred to in section 49, may, without the consent of the landlord, transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose, having relation to the good of the holding or tenure, or of the tenure or estate in which it is comprised.

[Cf. 1885, s. 84.]

(1a) The expression "reasonable and sufficient purpose," as used in sub-section (1), includes—

(a) in the case of a member of a Bhuihari family, but not in the case of an occupancy-raiyat, building purposes generally, and

(b) in any case, the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose.

(1b) Every such transfer must be made by registered deed, and, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner must be obtained to the terms of the deed and to the transfer.

(2) Before consenting to any such transfer the Deputy Commissioner shall satisfy himself that the landlord is adequately compensated for the transfer, and, where only part of a holding or tenure is transferred, may, if he thinks fit, apportion between the transferee and the original tenant the rent payable for the holding or tenure.

Acquisition of holding by landlord for certain purposes.

51. (1) Notwithstanding anything contained in sections 47 and 48, the Deputy Commissioner may, on the application of the landlord of a holding,

[1885, s. 84.]

and on being satisfied that he is desirous of acquiring the holding or any part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purpose of mining, manufacture or irrigation, or as building ground

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for any such purpose or for access to land used or required for any such purpose,
and after such inquiry as the Deputy Commissioner may think necessary,

authorise the acquisition thereof by the landlord upon such conditions as the Deputy Commissioner may think fit, and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Deputy Commissioner, including full compensation to the tenant.

(2) If the landlord tenders to the tenant such sum as the Deputy Commissioner has approved under sub-section (1) as payment for any land, and the tenant refuses to receive the same, the Deputy Commissioner may, on the landlord depositing the said sum with the Deputy Commissioner, give possession of the land to the landlord in the prescribed manner.

Tenant not liable to transferee of landlord's interest for land paid to former landlord, without notice of the transfer.

52. (1) A tenant shall not, when his landlord's interest [1885, s. 72.] is transferred, be liable to the transferee for rent which became due after the transfer and was paid in good faith to the landlord whose interest was so transferred, unless the transferee has before the payment served notice of the transfer on the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

CHAPTER IX.**GENERAL PROVISIONS AS TO RENT.***Payment of rent.*

Instalments.

53. Subject to any registered agreement or local [1885, s. 53.] custom or usage to the contrary, a money-rent payable by a tenant shall be payable in four equal instalments falling due on the last day of each quarter of the agricultural year.

Methods of payment of rent.

54. Payment of rent by a tenant to his landlord in respect of [1879, s. 13, the land held or cultivated by the tenant may be made, either— para. 1. 1885, s. 54(2).]

- (a) by tendering the rent at the mal-cutcherry for the receipt of rents or other place where the rent of such land is usually payable, or
- (b) by remitting the amount of the rent to the landlord or his agent by postal money-order in the prescribed form.

Receipts for rent and interest thereon.

55. (1) Every tenant who makes a payment on account [1879, s. 12. Cf. 1885, ss. 55 to 59.] of rent, or interest due thereon, or both, to his landlord shall be entitled to obtain forthwith from the landlord or his agent a signed receipt for the same, in the prescribed form.

(2) The landlord or his agent shall prepare and retain a counterfoil, in the prescribed form, of the receipt.

(3) If any landlord or his agent, without reasonable cause, fails to grant such a receipt or to prepare and retain such a counterfoil, then, on proof thereof, the Deputy Commissioner may, in a summary proceeding, by order, impose on the landlord a fine which may extend to fifty rupees in respect of each such failure; and may, in his discretion, award to the tenant, by way of compensation, such portion of the fine as the Deputy Commissioner may think fit.

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(Chapter IX.—General Provisions as to Rent.—Clauses 56, 57.)

(4) If, in any suit or other proceeding under this Act or any other law, the Court or presiding officer (not being the Deputy Commissioner) finds that any landlord or agent has failed—

- (a) to deliver to a tenant a receipt in the prescribed form, or
- (b) to prepare and retain a counterfoil in the prescribed form of a receipt delivered to a tenant as aforesaid, such Court or officer shall inform the Deputy Commissioner.

(5) If, in any proceeding instituted under sub-section (3), the Deputy Commissioner discharges any landlord, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Deputy Commissioner may, in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation, not exceeding fifty rupees, as the Deputy Commissioner thinks fit.

Deposit of rent in
Court of Deputy
Commissioner.

56. In any of the following cases, namely,—

[1879, s. 13.
1885, s. 61(2).]

- (a) when a tenant tenders or remits money on account of rent, and the landlord or his agent refuses to receive it or refuses to grant a receipt for it; or
- (b) when a tenant who is bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord or his agent will not be willing to receive it and to grant him a receipt for it; or
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bond fide* doubt as to who is entitled to receive the rent,

the tenant, whether a suit has been instituted against him or not, may deposit to the credit of the landlord the full amount which he considers to be due from him in the Court of the Deputy Commissioner having jurisdiction to entertain a suit or application for such rent;

and such deposit shall, as far as the tenant and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the tenant of the amount deposited to the credit of the landlord.

(2) (Omitted.)

Procedure on re-
ceipt of deposit, and
payment of same.

57. (1) On the written application of the tenant or his agent, and on his making a declaration in the prescribed form, [1879, s. 14.
1885, ss. 62.
to 64.] the Deputy Commissioner shall receive such deposit and give a receipt for the sum deposited.

(2) The Deputy Commissioner shall, as soon as possible after the receipt of any money so deposited, issue a notice, in the prescribed form, to the landlord to whose credit it has been deposited.

(3) If any person claiming to be entitled to receive the money in deposit appears and applies for payment thereof to him, the Deputy Commissioner may pay the amount to him if he appears to be entitled to the same, or may, if the Deputy Commissioner thinks fit, retain the amount pending a decision by a Civil Court declaring what person is so entitled.

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(Chapter IX.—General Provisions as to Rent.—Clauses 58—61A.)

(4) Any sum deposited as aforesaid may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor—

(a) at the discretion of the Deputy Commissioner, and after serving notice on the landlord and giving him an opportunity to object, and for reasons to be recorded in writing—at any time within a period of three years from the date on which the deposit was made, or

(b) upon the application of the depositor—at any time after the expiration of the said period.

Limitation of suit
or application for
rent due prior to
deposit.

58. Whenever any deposit has been received by the Deputy Commissioner, no suit shall be maintained, and no application for a certificate under section 240 shall be entertained, against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted or such application be made within six months from the date of the service of the notice issued under section 57 in respect of such deposit. [1879, s. 15.]

Arrears of Rent.

What to be deemed
arrear of rent;
interest on arrears.

59. (1) Any instalment of rent which is not paid before sunset on the day when the same is payable shall be deemed an arrear of rent, and, shall be liable to simple interest not exceeding twelve-and-a-half per centum per annum: [1879, ss. 30, 31. 1885, ss. 54 (1), (3), 67.]

Provided that, where a tenant pays his rent in full within the agricultural year in which it accrues due, interest shall not exceed six and-a-quarter per centum on the yearly rent lawfully payable.

(2) Sub-section (1) shall not apply to dues which are recoverable under the Cess Act, 1880, as if they were rent. [Ben. Act. IX of 1880.]

Ejection of tenure-
holder and cancella-
tion of lease for
arrears.

60. When an arrear of rent is adjudged to be due from a tenure-holder not having a permanent or transferable interest in the land, the lease of such tenure-holder shall be liable to be cancelled and the tenure-holder shall be liable to ejection: [1879, s. 82.]

Provided that no such cancellation or ejection shall be made otherwise than in execution of a decree or order made under this Act.

Arrear of rent to
be first charge on
tenancy.

61. The rent of a tenancy shall be a first charge on the tenancy: [1879, s. 10A (2).]

Provided that, if a tenancy is sold in execution of a decree for arrears of rent, the purchaser shall acquire the tenancy free of all liability for rent which accrued due before the date of the sale, and any rent so due shall be a first charge on the sale-proceeds of the tenancy.

Commutation of Rent payable in Kind.

Application for
commutation of rent
payable in kind.

61A. (1) When any tenure-holder or occupancy-maiyat pays for a tenure or holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in money, then the rent so payable shall not be altered, whether by private contract or otherwise, except on the application of either the tenant or his landlord to have the rent commuted to a money-rent. [1885, s. 40.]

(2) Such application may be made to the Deputy Commissioner or a Revenue-officer.

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(Chapter IX.—General Provisions as to Rent.—Clause 61B.)

(3) When any such application is made, the Deputy Commissioner or Revenue-officer may, after such inquiry as he thinks fit to make, determine the sum to be paid as money-rent, and may order that the tenant shall, in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the said officer shall have regard to—

- (a) the average money-rent payable by tenants for land of a similar description and with similar advantages in the vicinity;
- (b) the average nett value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;
- (bb) the special circumstances (if any) which gave rise to the assessment of the rent payable by the tenant at the date of the application;
- (c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges; and
- (d) improvements effected by the landlord or the tenant in respect of the holding;

and shall proceed in the prescribed manner.

(5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.

(6) When any such order is made by a Deputy Commissioner, it shall be subject to appeal as provided in Chapter XVI.

(7) When any such order is made by a Revenue-officer, an appeal shall lie in the prescribed manner and to the prescribed officer.

(8) If the application is opposed, the officer shall consider whether, under all the circumstances of the case, it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it he shall record in writing the reasons for the refusal.

(9) (Omitted.)

61B. (1) Where the rent of a tenure or holding has [1888, s. 40A] been commuted under section 61A,—

(a) it shall not be increased for a period of fifteen years, except—

- (i) by order of the Deputy Commissioner, on the ground of a landlord's improvement or an alteration in the area of the tenure or holding, or
- (ii) by order of a Revenue-officer passed under Chapter XII; and

(b) it shall not be reduced for a period of fifteen years, except—

- (i) by order of the Deputy Commissioner, on one of the grounds specified in provisions (i) and (iii) to section 34, or
- (ii) by order of a Revenue-officer passed under Chapter XII.

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(Chapter IX.—General Provisions as to Rent—Chapter X.—Miscellaneous Provisions as to Landlord and Tenant.—Clauses 62—68.)

Penalties for illegal exaction of rent or praedial conditions.

62. (1) A landlord who, except under any special enactment for the time being in force, levies from a tenant any money in excess of the rent lawfully payable, with interest thereon, or enforces compliance by any tenant with any praedial condition to which he is not lawfully entitled, shall, on the application of the tenant, be liable,

under the order of the Deputy Commissioner, or of any officer who may be specially empowered by the Local Government in this behalf,

to pay as penalty such sum as such officer thinks fit, not exceeding two hundred rupees, or, when double the amount or value of what is so levied or enforced exceeds two hundred rupees, not exceeding double that amount or value.

(2) Such sum shall be awarded to the tenant as compensation,

63. (Omitted.)

CHAPTER X.**MISCELLANEOUS PROVISIONS AS TO LANDLORD AND TENANT.***Korkar.*

64. (1) The oral or written consent of the landlord for the conversion of land into korkar shall be required in every case except—

- (a) where the land was, before such conversion, included in the tenancy of a cultivator who has acquired a right of occupancy in it, or
- (b) where, by the custom or usage of the village, tenure or estate, such consent is not necessary.

(2) It shall be presumed, unless and until the contrary is proved, that the said consent is not required,—

(i) where any land in a village, other than land known as manjhishas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,—by a member of a Bhuihari family, or

(ii) where any land in a village is entered as a Mundari khunt-kattidari tenancy, or any tenant of land in a village is entered as a Mundari khunt-kattidari, in any record-of-rights finally published under this Act or under any other law in force before the commencement of this Act,—by a member of a Mundari khunt-katti family,

who holds land in such village.

65. Where the consent of the landlord is required by section 64 for the conversion of land into korkar, such consent shall be deemed to have been given if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejectment of the cultivator.

66. When any such application is made, the Deputy Commissioner may, after making such inquiry as he thinks fit,—

(a) order the ejectment of the cultivator from the land so converted into korkar, upon payment by the landlord of such reasonable compensation (if any) as the Deputy Commissioner may direct, or

(b) direct that the cultivator be left in undisturbed possession of the land.

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Prohibition against conversion of certain land into korkar.

67. Nothing in section 64 or section 65 shall authorize any cultivator to convert into korkar any orchard or cultivated or homestead land in the direct possession of any other person.

Right of occupancy in korkar.

68. Every raiyat who cultivates or holds land which he or [1879, s. 6, any member of his family has converted into korkar shall have para. 4.] a right of occupancy in such land, notwithstanding that he has not cultivated or held the land for a period of twelve years.

69. [Transferred to clause 76]

Ejectment.

Tenant not to be ejected except in execution of decree.

70. No tenant shall be ejected from his tenancy or any [1885, s. 89, portion thereof except in execution of a decree, or in execution of an order of the Deputy Commissioner passed under this Act.

Relief against forfeitures.

70A (1) Every decree or order for the ejectment of an occupancy raiyat or a non-occupancy raiyat on the ground—

(a) that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy; or

(b) that he has broken a condition, consistent with this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to ejectment,

shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy; and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(2) The Court may from time to time, for special reasons, extend a period fixed by it under sub-section (1).

(3) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree or order, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Decree or order for ejectment when to take effect.

70B. A decree or order for ejectment passed under this Act shall take effect from the end of the agricultural year in which it is passed, or at such earlier date (if any) as the Court may direct.

Power to replace in possession tenant unlawfully ejected.

71. If any tenant is ejected from his tenancy or any portion thereof in contravention of section 70, he may, within a period of one year (or, if he is an occupancy-raiyat, three years) from the date of such ejectment, present to the Deputy Commissioner an application praying to be replaced in possession of such tenancy or portion; and the Deputy Commissioner may, if he thinks fit, after making a summary inquiry, replace him in possession in the prescribed manner.

Surrender and Abandonment.

Surrender of land by raiyat.

72. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following.

[1885, s. 86
(1), (2), (4),
(5), (7). Cf.
1879, s. 29.]

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the date of the surrender, unless he gives to his landlord, at least four months before he surrenders, notice of his intention to surrender.

(3) The raiyat may, if he thinks fit, cause the notice to be served through the Court of the Deputy Commissioner within whose jurisdiction the holding or any portion of it is situate.

(4) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(5) Nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Abandonment of land by raiyat.

73. (1) If a raiyat voluntarily abandons the land held or cultivated by him, without notice to the landlord, and ceases either himself or through any other person to cultivate the land and to pay his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself. [1885, s. 7(1) to (8).]

(2) Before a landlord enters under this section, he shall send a notice to the Deputy Commissioner, in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Deputy Commissioner shall cause a notice of the fact to be published in the prescribed manner.

(3) When a landlord enters under this section, the raiyat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years, in the case of an occupancy-raiyat, or, in the case of a non-occupancy raiyat, one year, from the date of the publication of the notice; and thereupon the Deputy Commissioner may, on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession, in the prescribed manner, on such terms (if any) with respect to compensation to persons injured and payment of arrears of rent as to the Deputy Commissioner may seem just.

*Continuance of Occupation.**Effect of lease purporting to admit to occupation after occupation commenced.*

74. When a tenure-holder, village headman or raiyat has been in occupation of a tenure or holding, and a lease is executed with a view to the continuance of such occupation, he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him to occupation. [1885, s. 47.]

*Measurements.**Measurement of lands.*

75. (1) Every landlord of an estate, tenure or Mundari khunt-kattidari tenancy shall have a right to make a general survey or measurement of the lands comprised in such estate, tenure or tenancy, unless restrained from doing so by express engagement with the occupants of the lands. [1879, s. 83. 1885, s. 91(2).]

(2) If any landlord intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land, or if any tenant, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses to attend and point out such land, the landlord may present an application to the Deputy Commissioner.

(3) On receipt of such application the Deputy Commissioner shall, after taking such evidence and making such inquiry as he considers necessary, pass an order either allowing or disallowing the measurement, and, if the case so requires, enjoining or excusing the attendance of any tenant.

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(Chapter XI.—Custom and Contract.—Clauses 76—78.)

(4) If any tenant, after the issue of an order enjoining his attendance, refuses or neglects to attend, any map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

CHAPTER XI.

CUSTOM AND CONTRACT.

76. Nothing in this Act shall affect any custom, usage [1885, s. 184.] or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

I. A custom or usage whereby a raiyat obtains a right of occupancy as soon as he is admitted to occupation of the tenancy, whether he is a settled raiyat of the village or not, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

II. A custom or usage by which an under-raiyat can obtain rights similar to those of an occupancy-raiyat is, similarly, not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act, and will not be affected by this Act.

III. A custom or usage whereby a raiyat is entitled to make improvements on his tenancy and to receive compensation therefor on ejectment is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

IV. A custom or usage whereby Korkar is held—

- (a) during preparation for cultivation, rent-free, or
- (b) during or after preparation, at a rate of rent less than the rate payable for ordinary raiyati land in the same village, tenure or estate,

is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

77. Except in so far as the Local Government may [1885, s. 181.] otherwise direct by notification, nothing in this Act shall affect any incident of a ghatwalli or other service tenure or holding.

Homesteads.

77A. When a raiyat holds his homestead otherwise [1885, s. 182.] than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Restrictions on exclusion of Act by agreement.

78. (1) Nothing in any contract between a landlord and [1885, s. 178.] a tenant made before or after the commencement of this Act shall—

- (a) bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) take away an occupancy-right in existence at the date of the contract, or
- (c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(2) Nothing in any contract made between a landlord and a tenant between the 1st January, 1903, and the commencement of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land not being landlords' privileged lands as defined in section 117.

(3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act, shall—

- (i) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land, or
- (ii) take away or limit the right of an occupancy-raiyat to use land as authorized by section 19, or

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Clauses 79, 80.)

- (iii) take away the right of an occupancy-riayat to transfer his holding or any portion thereof subject to, and in accordance with, the provisions of this Act, or
- (iv) take away the right of an occupancy-riayat to apply for a reduction of rent under section 33, or
- (v) take away the right of a tenant or landlord to apply for a commutation of rent under section 61A, or
- (vi) affect the provisions of section 59 relating to interest payable on arrears of rent, or
- (vii) take away the right of a riayat to surrender his holding in accordance with section 72.
- (viii) [Omitted.]

CHAPTER XII.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Power to order survey and preparation of record-of-rights.

79. (1) The Local Government may make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue-officer, in respect of the lands in any local area, estate, or tenure or part thereof. [1885, a. 101 (1), (3), (4), and Notfn.]

(2) A notification in the Calcutta Gazette of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights shall be prepared in the prescribed manner.

Particulars to be recorded.

80. Where an order is made under section 79, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:— [1885, a. 10 and Notfn.]

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, Mundari khunt-kattidar, settled riayat, occupancy-riayat, non-occupancy-riayat, riayat having khunt-katti rights, or under-riayat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared;
- (g) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (h) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (i) the rights and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;

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Clauses 81—83.)

- (k) the special conditions and incidents (if any) of the tenancy;
- (l) any easement attaching to the land for which the record-of-rights is being prepared;
- (m) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority;
- (n) the right of any person, whether a landlord or tenant or not, to take forest-produce from jungle-land or waste-land, or to graze cattle on any land, in any village in the area to which the record-of-rights applies;
- (o) the right of any resident of the village to reclaim jungle-land or waste-land, or to convert land into korkar.

Power to order survey and preparation of record-of-rights as or avert disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water, [1885, s. 102A and Notfn.]

make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

Preliminary publication, amendment and final publication of record-of-rights. 82. (1) When a draft record-of-rights has been prepared under [1885, s. 103A and Notfn.] this Chapter, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of in the prescribed manner, the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Presumptions as to final publication and correctness of record-of-rights. 83. (1) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly-certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate, signed by the Revenue-officer, or by the Deputy Commissioner of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication. [1885, s. 103B and Notfn.]

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.

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Clauses 84—86.)

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

Settlement of fair rents.

84. (1) In every area in respect of which a survey is made and a record-of-rights is prepared under section 79, the Revenue-officer may settle fair rents in respect of any land held by a tenant. [1885, ss. 104, 104D, 106.]

(1a) Settlements of rents may be made under sub-section (1) either—

- (i) on the application of any landlord or tenant, or
- (ii) without such application, if the Local Government so directs.

(2) Such settlements shall ordinarily be made after the final publication of the record-of-rights, and shall not in any case be made on the application of a landlord or tenant after such final publication unless such application be made within two months from the date of the certificate of such final publication; but may in any case be made before such publication—

- (a) with the consent of the parties concerned, or
- (b) if the Revenue-officer considers that that course would, in the circumstances, be advisable.

(2a) Whenever a settlement of rents under this section is made after the final publication of the record-of-rights, reasonable notice shall first be given to the parties concerned; and an appeal shall lie, in the prescribed manner and to the prescribed officer, from such settlement.

(3) For the purpose of settling rents under this section, the Revenue-officer shall have regard to such rules as may be made in this behalf under section 256.

Decision of issues arising during course of settlement of rents.

85. Where, in any proceedings for the settlement of rents under section 84, any of the following issues arises, [1885, s. 106A.] namely,—

- (a) whether the land is, or is not, liable to the payment of rent;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) whether the relation of landlord and tenant exists;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging; or
- (f) whether the special conditions and incidents of the tenancy, or any easement attaching to the land, have not or has not been recorded, or have or has been wrongly recorded,

the Revenue-officer shall try and decide such issue and settle the rent under section 84 accordingly.

Institution of suits before Revenue-officer.

86. (1) In proceedings under this Chapter, a suit may be instituted before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 82, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which he has made from, the record, whether such dispute be—

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estates, or
- (c) between tenant and tenant, or

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(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 87—90.)

(d) as to whether the relationship of landlord and tenant exists, or

(e) as to whether land held rent-free is properly so held, or

(f) as to any other matter;

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as may be made in this behalf under section 258, transfer any particular case or class of cases to a competent Civil Court for trial.

Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Chapter, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 85 in proceedings instituted after the final publication of the record-of-rights.

(g) An appeal shall lie, in the prescribed manner and to [1885, s. 109A (2).] the prescribed officer, from decisions passed under sub-section (1).

Entry in record-of-
rights of rents set-
tled and decisions
made. 87. A note of all rents settled under section 84, and [1885, s. 107 (2).] of all decisions under sub-section (1) and decisions on appeal under sub-section (2) of section 86, shall be made in the record-of-rights as finally published under section 82; and such note shall be considered as part of the record.

Revision by Revenue-
officer. 88. Any Revenue-officer specially empowered by the [1885, s. 108.] Local Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decision under section 82, section 84 or section 85, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed under section 86:

Provided that no such order or decision shall be so revised if a suit or an appeal in respect thereof is pending under section 86, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Correction by
Revenue-officer of
mistakes in record-of-
rights. 89. Any Revenue-officer specially empowered by the Local [1885, s. 108A and Notfa.] Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 82, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:

Provided that no such correction shall be made if a suit or an appeal affecting such entry is pending under section 86, sub-section (2), section 110, clause (8) or clause (10), section 246 or section 247, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Stay of proceedings
before Deputy Com-
missioner or Civil
Court until expiration
of six months after
final publication of
record-of-rights. 90. (1) When an order has been made under section 79, or [1879, s. 28A.
1885, s. 111
and Notfa.] under any law in force before the commencement of this Act, directing the preparation of a record-of-rights, then, notwithstanding anything contained in the foregoing sections of this Chapter, no Deputy Commissioner or Civil Court shall, until six months after the final publication of the record-of-rights, entertain any suit or application not being an application under the Code of Criminal Procedure, 1898, [V of 1898.]

(a) in which there is in issue, either directly or indirectly, the existence or non-existence, in the area to which the record-of-rights applies, of any right referred to in clause (n) of section 80, or

(b) for the alteration of the rent or the determination of the status of any tenant in such area:

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(Chapter XII.—Record-of-Rights and Settlement of Rents.—
Clauses 91—93.)

Provided that, if any person considers himself aggrieved by any act of waste or damage committed by any other person in respect of any waste-land or jungle-land during the period within which suits and applications are prohibited by this section, he may apply to the Deputy Commissioner, who may, after such inquiry as he thinks fit, by written order, prohibit the continuance of such waste or damage.

(2) The period during which the institution of a suit or [1885, s. 111A, the making of an application has been delayed by sub-
section (2) shall be excluded in computing the period of limitation provided for such suit or application.

Bar to jurisdiction of Courts in matters relating to record-of-rights.

91. No suit shall be brought in any Court in respect of any [1885, s. 111A, order directing the preparation of a record-of-rights under this para. 1, and Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it. ^{Notif.}]

Stay of applications and suits in which certain issues arise.

92. (1) When a record-of-rights in respect of any land [1885, s. 111B, has been prepared under this Chapter, and finally published, (1), (2), (4).] no application or suit affecting any such land or any tenant thereof shall, within six months from the date of the certificate of final publication of such record-of-rights, be made or instituted before the Deputy Commissioner or in any Civil Court for the decision of any of the following issues, namely :—

- (a) (*Omitted*)
- (b) whether the relation of landlord and tenant exists;
- (c) whether the land is part of a particular estate or tenancy;
- (d) whether there is any special condition or incident of the tenancy, or
- (e) whether any easement attaches to the land.

(1a) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted before the Deputy Commissioner or in a Civil Court, the Revenue-officer shall not entertain any suit under section 86 involving the decision of the same issue.

(2) Where the making of an application or the institution of a suit has been delayed by sub-section (1), the period of six months therein mentioned shall be excluded in computing the period of limitation provided for such suit or application.

Period for which rents entered in the record-of-rights are to remain unaltered.

93. (1) When the rent of an occupancy holding is entered [1870, s. 232.
1885, s. 113.] in a record-of-rights which has been prepared and finally published under this Chapter or any law in force before the commencement of this Act, then, subject to the provisions of sections 86, 88 and 89,

such rent shall not, except on the ground of a landlord's improvement, be enhanced for a period of—

(a) fifteen years after the final publication of the record-of-rights, when such publication was made after the commencement of this Act, or

(b) seven years after the final publication of the record-of-
rights, when such publication was made before the commencement of this Act;

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Clause 94.)

and such rent shall not be reduced within the said periods, respectively, save on the ground of alteration in the area of the holding or on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;

and no demand for rent in respect of an occupancy holding, in excess of the amount entered in the said record-of-rights, shall be enforceable, save as provided in this Chapter or in section 31:

Provided that, in any area in respect of which a record-of-rights has been finally published before the commencement of this Act, a Revenue-officer may, on the application of any landlord, made within two years from the commencement of this Act, assess a fair rent on lands which are included in a holding and are assessable with rent but for which no rent has been paid or has been entered as payable in the record-of-rights.

(2) The periods of fifteen years and seven years mentioned in clauses (a) and (b) of sub-section (1) shall be counted from the date of the final publication of the record-of-rights.

Expenses of proceedings under this Chapter. 94. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, [1885, s. 114, & Notfn.]

the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary-marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct,

shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments (if any), as the Local Government, having regard to all the circumstances, may determine.

(2) The cost of preparing copies of Survey maps and extracts from records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

(3) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(4) The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

95. (Omitted.)

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Clauses 96—98.)

Power of Revenue-officer to give effect to agreement or compromise. 96. In framing a record-of-rights, and in deciding disputes, [1885, s. 109B] under this Chapter, the Revenue-officer shall give effect to any Notfn.] lawful agreement or compromise made or entered into by any landlord and his tenant:

Provided as follows:—

- (a) the Revenue-officer shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act; and
- (b) where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-riyat. This affects the rights of the tenants of B. The Revenue-officer must, under proviso (b), inquire whether B is a tenure-holder or a raiyat, within the meaning of section 5 or section 6. If he finds, on the evidence, that B is a raiyat, he may give effect to the agreement. If he so finds that B is a tenure-holder, he must not give effect to the agreement.

Date from which settled rent takes effect.

97. When a rent is settled by a Revenue-officer under [1885, s. 110.] this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision finally fixing the rent.

Revision of record-of-rights, and new settlement of rents, under orders of Local Government.

98. (1) The Local Government may at any time, either [1885, 104G (2) and Notfn.] of its own motion or on the application of any landlord or tenant, direct that any record-of-rights which has been finally published under this Act or under any law in force before the commencement of this Act, or any portion of any such record-of-rights, be revised, in the prescribed manner, but not so as to affect any rent entered therein.

(2) At any time after the expiration of the period of—

- (a) fifteen years from the date of the certificate of the final publication of a record-of-rights, when such publication was made after the commencement of this Act, or
- (b) seven years from the date of the certificate of the final publication of a record-of-rights, when such publication was made before the commencement of this Act,

and thereafter at intervals of periods of fifteen years, the Local Government may, of its own motion or on the application of any landlord or tenant, direct—

- (i) that such record-of-rights or any portion thereof be revised in the prescribed manner, and
- (ii) that a settlement of rents payable by tenants be made under section 84.

(3) The foregoing sections of this Chapter shall, subject to any rules made in this behalf under section 256, apply to every revision and settlement referred to in sub-section (1) or sub-section (2).

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(*Chapter XII.—Record-of-Rights and Settlement of Rents.—Chapter XIII.—Prædial Conditions, and the Commutation and Record thereof.—Cluses 98A—104.*)

Enhancement of
rent where application
under section 98 is
rejected.

98A. If the Local Government rejects any application made by a landlord under section 98, sub-section (2), for a revision of a record-of-rights after the expiration of the period of fifteen years or the period of seven years, as the case may be, referred to in that sub-section, such landlord may apply to the Deputy Commissioner for the enhancement of any rent entered in such record-of-rights as being payable to him.

Validation of direc-
tions given, before
the commencement of
this Act, for the re-
cord of certain rights.

99. Where a direction has been given, in any order made under section 101 of the Bengal Tenancy Act, 1885, before the commencement of this Act, for the record of any rights of the kind mentioned in clause (n) of section 80 of this Act, such direction shall be deemed to be as valid as if the said clause had been enacted before such order was made.

CHAPTER XIII.

PRÆDIAL CONDITIONS, AND THE COMMUTATION AND RECORD THEREOF.

Prohibition against
new prædial condi-
tions.

100. From and after the commencement of this Act,—

(1897, a. 10
(1).)

- (a) no tenancy shall be created with any prædial condition attached, other than rent-free tenancies with the sole condition of rendering personal service; and
- (b) no new prædial condition shall be imposed on any tenancy in existence at the time of such commencement.

(2) (Omitted.)

Liability of tenant
when original condi-
tions of tenancy can-
not be ascertained.

101. When the original conditions of a tenancy cannot be ascertained, the tenant shall not be liable to any prædial conditions other than or in excess of those to which, by local custom or usage, he, in common with the general body of the class to which he belongs in the village, tenure or estate in which the lands of the tenancy are situated, is liable:

Provided that, in any case in which prædial conditions have been complied with by a tenant for a period of five years continuously, any Revenue-officer acting under this Chapter may, when commuting such conditions under this Chapter, presume that the same have been complied with in accordance with local custom or usage or in accordance with an express or implied contract made at the commencement of the tenancy.

Method of calculat-
ing present value of
prædial condition.

102. When, in any proceedings under this Act, it becomes necessary for a Court to calculate the value of any prædial condition, such value shall be taken to be its average value during the ten years immediately prior to the proceedings, or during any shorter period for which evidence may be available.

Procedure in suit to
recover value of
prædial conditions.

103. When, in any suit for the recovery of rent, it is sought to recover the value of the prædial conditions appurtenant to a tenancy, an issue may be framed as to whether the value of the prædial conditions, when added to the rent payable in respect of the tenancy, exceeds a fair rent; and, if it is found that the resulting amount exceeds a fair rent, the Court shall decree the rent and so much (if any) of the value of the prædial conditions as, together with the rent, will not exceed the sum which would, having regard to the special circumstances of the case, be a fair rent.

Voluntary commu-
tation of prædial con-
ditions.

104. (2) When any land is held subject to any prædial conditions, the tenant or the landlord may apply in writing to a Revenue-officer for commutation of such conditions.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XIII.—Prædial Conditions, and the Commutation and Record thereof.—Clauses 105, 106.)

(2) The Revenue-officer shall thereupon cause a notice to be served on the landlord or the tenant, as the case may be, and shall fix a day for considering the application; and on such day, or any day thereafter to which the hearing may be adjourned, shall proceed to inquire into the matter and to determine the amount which, in his judgment, is fairly and equitably payable in commutation of such conditions.

(3) In calculating the said amount, the Revenue-officer shall have regard only to the conditions to which the tenant is liable in accordance with local custom or usage or with any contract made when the tenancy commenced, and to the money value of such conditions at the time of making such calculation, and shall follow the procedure provided in section 102:

Provided that the amount payable in commutation shall be so fixed that the total annual rent of the land, including such amount as aforesaid, shall not exceed the sum which would, having regard to the special circumstances of the case, be a fair and reasonable rent if the land were not held subject to any prædial conditions.

Power to order record of prædial conditions, with or without commutation, either—

- (a) that a record of all prædial conditions to which the lands within any local area or any estate, tenure or part thereof are subject shall be prepared, and a commutation of such conditions made, by a Revenue-officer; or
- (b) that a record as aforesaid be made by a Revenue-officer without commutation of such conditions as aforesaid.

(2) A notification in the Calcutta Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(3) The record of prædial conditions shall be prepared in the prescribed manner.

Preparation record.

of 106. (1) Whenever an order is made under section 105, the Revenue-officer shall thereupon proceed to prepare a record containing the following particulars, namely:—

- (a) the name of each tenant;
- (b) the name of his landlord;
- (c) the rent payable for the lands held by each tenant at the time the record is being prepared;
- (d) the prædial conditions to which all or any of such lands are subject;
- (e) the amount which, in the judgment of the Revenue-officer, may fairly be deemed payable in commutation of such conditions, and
- (f) any other prescribed particulars.

(2) In calculating the amount payable in commutation of such conditions, the Revenue-officer shall be guided by the provisions of section 104, sub-section (3).

*The Chota Nagpur Tenancy Bill, 1908.**(Chapter XIII.—Prædial Conditions, and the Commutation and Record thereof.—Clauses 107—110.)*

Publication of record. 107. (1) When the Revenue-officer has prepared a record [1897, s. 7.] under section 106, he shall cause a draft of the same to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of publication.

(2) When objections have been considered and disposed of in the prescribed manner, the record shall be finally framed and published in the prescribed manner.

(3) Separate drafts or records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

Appeal from orders of Revenue-officers. 108. An appeal shall lie, in the prescribed manner and to [1897, s. 8.] the prescribed officer, from any order of a Revenue-officer under this Chapter.

Revision by Commissioner or Board. 109. The Commissioner or the Board may direct the [1897, s. 9.] revision of any record prepared under this Chapter, or any portion of such record, at any time within two years from the date of the final publication of the record, but not so as to affect any decision from which an appeal has been preferred under section 108:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Procedure where a survey and record-of-rights are being made. 110. In every local area, estate, tenure or part thereof, in [1897, s. 9A.] which a survey is being made and a record-of-rights is being prepared under this Act or under any law in force before the commencement of this Act,

and in which a record of prædial conditions is being prepared and a commutation thereof is being made under an order issued under section 105,

sections 106 to 108 shall not apply, and the following provisions shall have effect, namely:—

(1) The Revenue-officer shall, at the time of attesting the preliminary record, ascertain all the prædial conditions to which, by local custom or usage or by contract made when the tenancy commenced, each tenant is liable, and the cash values of such conditions; and shall prepare a statement, in the prescribed form, showing the conditions and values so ascertained.

(2) In calculating the cash value of such conditions, the Revenue-officer shall be guided by the provisions of section 104, sub-section (3).

(3) The Revenue-officer shall enter in the *khatiyán* of each tenant the cash value of the prædial conditions (if any) to which such tenant is liable, as ascertained under clause (1).

(4) If any tenant is liable, by local custom or usage or by contract made when the tenancy commenced, to any prædial conditions other than those to which the general body of tenants are liable, or is not liable to all the prædial conditions to which the general body of tenants are liable, the Revenue-officer shall also specify in the *khatiyán* the prædial conditions to which such tenant is liable.

(5) The statement prepared under clause (1), and the entries in the *khatiyán*, shall be published in draft in the same manner and for the same period as the record-of-rights.

(6) Objections as to entries or omissions in the statement or *khatiyán* relating to prædial conditions may be made under the same conditions as objections to entries in or omissions from the record-of-rights, and shall be disposed of in the same manner as such objections.

The Ochota Nagpur Tenancy Bill, 1908.

(Chapter XIII.—Prædial Conditions, and the Commutation and Record thereof.—Clauses 111—115.)

- (7) After the disposal of objections, the said statement, and the entries in the *khatiyan* relating to prædial conditions, shall be finally published at the same time and in the same manner as the record-of-rights.
- (8) At any time within three months from the date of the certificate of the final publication of the record-of-rights, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry in the record relating to prædial conditions or regarding any omission to enter any such conditions in the record; and the Revenue-officer shall hear and decide the dispute.
- (9) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 256, adopt the procedure laid down in Chapter XVI for the trial of suits.
- (10) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any decision of a Revenue-officer under clause (8).

Note of decisions in record-of-rights.

111. A note of all decisions under clause (8) and decisions on appeal under clause (10) of section 110 shall be made in the record-of-rights as finally published under section 82, and such note shall be considered as part of the record.

Decision of question as to whether a payment in kind is a prædial condition or a payment of rent in kind.

112. Where, in any proceeding under this Chapter or under section 61A, a question arises as to whether a payment in kind is a prædial condition or a payment of rent in kind, the Revenue-officer acting under this Chapter, or the officer acting under section 61A, as the case may be, shall, after such inquiry as he may consider necessary, decide whether in fact the payment is a prædial condition or not.

Commencement and effect of commutation.

113. (1) When the commutation of any prædial conditions is settled under this Chapter, for any local area or estate, tenure or part thereof, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

(2) The amount determined by a Revenue-officer under this Chapter to be payable by a tenant in commutation of prædial conditions shall be deemed to be part of the rent payable by the tenant, and shall be recoverable accordingly.

Expenses of voluntary commutation.

114. (1) (*Transferred to clause 253B*).

[1897, s. 10.]

(2) When in any case the proceedings under section 104 have been completed, the Revenue-officer shall apportion the total expenses thereof between the landlord and tenant in such proportion as, having regard to all the circumstances, he may deem fit; and the amounts so apportioned shall be recoverable as an arrear of land-revenue.

(3) (*Transferred to clause 253B*).

Expenses of record and compulsory commutation.

115. (1) The expenses incurred by the Government in carrying out in any local area or any estate, tenure or part thereof any order made under section 105, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, estate, tenure or part, in such proportions as the Local Government, having regard to all the circumstances, may determine.

(2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

The Chota Nagpur Tenancy Bill, 1908.

(*Chapter XIII.—Pradial Conditions, and the Commutation and Record thereof.—Chapter XIV.—Record of Landlords' Privileged Lands.—Clauses 116—120A.*)

Saving of right to claim reduction or enhancement of rent.

116. No proceedings under this Chapter shall bar the right of [1897, s. 12A.] any tenant or landlord to claim a reduction or enhancement of rent under this Act after such proceedings have been completed.

CHAPTER XIV.**RECORD OF LANDLORDS' PRIVILEGED LANDS.**

Definition of "land-
lords privileged lands."

117. (1) The expression "landlords' privileged lands," [1879, s. 6,
para 1,
1885, ss. 116,
120 (1) (a).] as used in this Chapter, means—

(a) lands which are cultivated by the landlord himself with his own stock or by his own servants or by hired labour, or are held by a tenant on lease for a term of years or year by year, and which are, by custom, recognised as privileged land in which occupancy-rights cannot accrue, and

(b) lands which are entered as manjhias or bathkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1889.

Ben. Act II of
1889.

(2) From such date as the Local Government may, by notification, direct, no lease shall be considered for the purposes of clause (a) of this section unless it be in writing.

Power of Local
Government to direct
a Revenue-officer to
make a survey and
record of landlords'
privileged lands.

118. The Local Government may, by notification, direct [1885, s. 117.] a Revenue-officer to make a survey and record of all lands in any specified local area which are landlords' privileged lands within the meaning of clause (a) of section 117.

Application of certain
sections.

118A. When a notification has been published under [1885, s. 118.] section 118, directing the making of a record, the provisions of sections 82, 83, 88, 87, 89, 94 and 96, so far as they may be applicable, shall apply to such record as if it were a record-of-rights referred to in those sections.

Power for Revenue-
officer to record
landlords' privileged
lands on application
of landlord or tenant.

119. When any land is alleged to be a landlord's [1885, s. 118.] privileged land within the meaning of clause (a) of section 117, then, on the application of the landlord or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may ascertain and record whether the land is or is not landlord's privileged land within the meaning of the said clause:

Provided that, when a record of such lands has been or is being made by a Revenue-officer under section 118, no application shall be entertained under this section.

Procedure of Revenue-
officer.

120. In any inquiry under this Chapter, a Revenue- [1885, s. 120.
(2).] officer—

(1) shall have regard to any evidence that may be available in respect of the following among other matters, namely:—

(a) who originally reclaimed the lands and brought them under cultivation,

(b) whether the lands have at any time been let as landlords' privileged lands or as raiyati lands, and

(c) whether the lands have, since their reclamation, been let year by year, or for specific periods, or for indefinite periods; and

(2) shall proceed in the prescribed manner; and

(3) shall receive in evidence any judgment, decree or order of a Civil Court or of the Deputy Commissioner, if the same be relevant;

but no such judgment, decree or order shall be conclusive proof that the lands are, or are not, landlords' privileged lands.

Presumption that
lands are not
landlords' privileged
lands.

120A. In any inquiry by a Revenue-officer under this Chapter, or by any Court, as to whether lands are or are not landlords' privileged lands, the officer or Court shall presume, until the contrary is proved, that the lands are not landlords' privileged lands.

The Chota Nagpur Tenancy Bill, 1908.

(*Chapter XIV.—Record of Landlords' Privileged Lands.—Chapter XV.—Record of Rights and Obligations of Ruiyats having Khunt-katti Rights, Village Headmen, and other classes of Tenants.—Clauses 121—125.*)

No land to be recorded as landlords' privileged lands in village containing manjhias or bethkheta.

Exclusion of unrecorded lands from category of landlords' privileged lands.

Appeal.

121. Where any land in any village is entered as manjhias or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, a Revenue-officer acting under this Chapter shall not record any other lands in that village as being landlords' privileged lands.

Ben. Act II
of 1869.

121A. When a record of landlords' privileged lands has been prepared under section 118 for any area, no other lands in that area shall be deemed to be landlords' privileged lands.

122. An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions and orders of a Revenue-officer under this Chapter.

CHAPTER XV.**RECORD OF RIGHTS AND OBLIGATIONS OF RUIYATS HAVING KHUNT-KATTI RIGHTS, VILLAGE HEADMEN AND OTHER CLASSES OF TENANTS.**

Record-of-rights and obligations of ruiyats having khunt-katti rights, village headmen, and other classes of tenants.

123. (1) The Local Government may make an order directing that a record be prepared by a Revenue-officer of the rights and obligations in any specified local area of—

- (a) ruiyats having khunt-katti rights;
- (b) headmen of villages or groups of villages, whether known as mankis or pradhans or manjhis or otherwise; or
- (c) any other class of tenants;

and that a settlement of fair rents to be paid by such persons, or any of them, be made.

Explanation.—The word "rights," as used in this sub-section, includes the right of a village-headman to hold his office, as well as his right to hold land.

(2) A notification in the Calcutta Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

Application of certain sections.

123A. (1) When a notification has been published under section 123, directing the preparation of a record, the provisions of section 82, section 83, sub-sections (1) and (2), section 89, section 91, section 94 and section 96, so far as they may be applicable, shall apply to such record as if it were a record referred to in those sections.

(2) When any such notification directs that a settlement of fair rents be made, the provisions of section 84, sub-sections (2), (2a) and (3), section 85, section 88 and section 97, so far as they may be applicable, shall apply to such settlement as if it were a settlement referred to in those sections.

Notice of entries to interested persons.

124. At the time of the final publication of a record prepared by a Revenue-officer under this Chapter, that officer shall cause a copy of the entries therein to be served, in the prescribed manner, on all persons interested in such entries, so far as such persons can be ascertained.

Suits to decide disputes as to entries in, or omissions from, record.

125. (1) Where there is a dispute regarding the correctness of any entry made in a record prepared under this Chapter, or regarding any incorrect omission therefrom, a suit may be instituted, before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record:

of 1879, ss.

160, 161.

Provided that, in any suit under this section, the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents, where such issue has been tried and decided, or is already being tried by a Revenue-officer acting under section 85 in proceedings instituted after the final publication of the record.

(2) In all suits under this section the Revenue-officer shall, subject to any rules made in this behalf under section 256, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

The Chota Nagpur Tenancy Bill, 1903.

(*Chapter XV.—Record of Rights and Obligations of Raiyats having Khunt-katti Rights, Village Headmen, and other classes of Tenants.—Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 126—132.*)

(3) An appeal shall lie, in the prescribed manner and to the prescribed officer, from the decision of the Revenue-officer in such suits.

Note of final decisions in record.

126. A note of all decisions under sub-section(1) of section 125, and of all decisions on appeal under sub-section (3) of that section, shall be made in the record prepared under section 123, and such note shall be considered as part of the record.

Evidential value of entries.

127. When a record has been finally published under section 123A, or amended under section 126, the entries made therein shall be conclusive evidence of the rights and obligations of the tenants to which such entries relate, and of all the particulars recorded in such entries.

Revenue-officer to have regard to origin and nature of tenancy and status of tenant.

128. In making inquiries under this Chapter into the rights and obligations of tenants, the Revenue-officer shall have regard to the origin and nature of each tenancy and to the real status of the tenant, notwithstanding that the tenant may have been described in any document as a thikadar or temporary lease-holder or in any other similar terms.

Exclusion of unrecorded lands from category of khunt-katti lands.

128A. When a record of the rights and obligations of raiyats having khunt-katti rights has been prepared under this Chapter for any local area, no lands in such area, which are not entered in such record, shall be recognized as lands in respect of which khunt-katti rights can be acquired.

CHAPTER XVI.

JUDICIAL PROCEDURE IN MATTERS COGNIZABLE BY THE DEPUTY COMMISSIONER.

Place for holding Deputy Commissioner's Court.

130. The Deputy Commissioner may hold a Court, for hearing and determining suits and applications under this Act, in any place within the local limits of his jurisdiction:

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or application, or their agents, shall have had due notice to attend at such place.

Office for instituting suits and making applications.

131. Suits and applications before the Deputy Commissioner under this Act shall respectively be instituted and made—

(a) in the revenue office of the district; or

(b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is in charge of a sub-division, then in the office of such Deputy Collector; or

(c) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is not in charge of a sub-division, but is specially empowered by the Local Government to receive such suits or applications, then in the office of such Deputy Collector; or

(d) in the office of the Revenue-officer having jurisdiction to entertain the same.

Withdrawal of suits.

132. The Deputy Commissioner may withdraw any suit from any Deputy Collector or Revenue-officer who is exercising powers of the Deputy Commissioner under this Act, and may try it himself or transfer it to any Deputy Collector.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 133—136.*)

Jurisdiction where land is situated in more than one district or sub-division.

133. (1) When any suit is instituted or application made [1879, s. 147.] in respect of any land comprised in a tenure or holding, and such land is situated in more than one district or sub-division, the district or sub-division in which the greater part of such land is situated shall be deemed to be the district or sub-division in which the cause of action has arisen;

and, if any question be raised respecting the district or sub-division in which the greater part of the land is situated, the Board or (if the land is situated in one district) the Deputy Commissioner shall decide the question.

(2) Except as provided in sub-section (1), no Deputy Commissioner [1879, s. 148.] shall exercise any jurisdiction under this Act in respect of any land situated beyond the local limits of his jurisdiction, even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

Certain suits and applications cognizable only by the Deputy Commissioner.

134. The following suits and applications shall be cognizable [1879, s. 37.] by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court, except as otherwise provided in this Act, namely:—

- (1a) all suits for the delivery of leases or counterpart engagements;
- (1) all suits and applications for the determination of the rent payable by any tenant for agricultural land;
- (2) all suits for arrears of rent due on account of—
 - (a) agricultural land, whether subject to the payment of rent or only to the payment of dues which are recoverable as if they were rent, or
 - (b) rights of pasturage, rights to take forest-produce, rights of fishery or other similar rights;
- (3) all suits under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land;
- (4) all applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord;
- (5) [Omitted.]
- (6) all suits by or against headmen of villages or groups of villages (whether known as mankis or pradhans or manjis or otherwise) for a declaration of title in, or for possession of, their office or agricultural land, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant;
- (7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession; and
- (8) all suits and applications in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner.

135. [Omitted.]

136. Subject to such rules (if any) as may be made in [1879, s. 39.] this behalf under section 256, a suit may be instituted before, or an application may be made to, the Deputy Commissioner collectively by or against any number of tenants holding land in the same village, and an allegation that such tenants are wrongly joined shall be no ground for dismissing a suit or refusing to hear an application;

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 137—140.*)

but no order shall be passed in any such collective suit or on any such collective application unless the officer making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it appears to the Deputy Commissioner that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Deputy Commissioner may order a separate trial or hearing.

Order or decree in collective suit or on collective application to specify how far it affects each tenant.

137. Every order or decree passed in any case which is tried or heard jointly under section 136 shall specify the extent to which each of the tenants named in the order or decree shall be affected thereby.

138. [Omitted.]

Institution of suits by presentation of statement of claim.

139. Suits before the Deputy Commissioner under this Act shall be instituted by presenting a statement of claim showing—

- (a) the name, description and place of abode of the plaintiff;
- (b) the name, description and place of abode of the defendant, so far as they can be ascertained;
- (c) the substance of the claim, and
- (d) the date of the cause of action.

Additional particulars required in statement of claim in certain suits and in certain applications.

140. (1) In all suits and applications before the Deputy Commissioner for the recovery of an arrear of rent, or for the ejectment of a tenant from any tenure or holding, or for the recovery of occupancy or possession of any tenure or holding, the statement of claim or application shall contain, in addition to the particulars required by section 139,—

- (a) a specification of the situation and designation of the land held by the tenant, and
- (b) a specification of the extent and boundaries of such land, or (if the plaintiff is unable to specify the extent or boundaries) a description sufficient for the identification of the land.

(2) In all suits and applications referred to in sub-section (1), and in all other suits and applications before the Deputy Commissioner under this Act relating to the rent of land or to any right or easement arising out of land,

if a survey has been made and a record-of-rights has been finally published under this Act or under any law in force before the commencement of this Act, in respect of the land to which the suit relates,

the statement of claim or application shall further contain the following particulars, namely:—

- (i) a list of the survey plots comprised in the tenancy,
- (ii) a statement of the rental of the tenancy according to the record-of-rights, and
- (iii) a copy of all entries in the record-of-rights in regard to the subject-matter of the suit or application,

unless the Deputy Commissioner is satisfied, for reasons to be recorded in writing, that it is not necessary that such particulars or any of them should be furnished or that the plaintiff was prevented by any sufficient cause from furnishing such particulars or any of them:

Provided that, in all cases in which the Deputy Commissioner admits a statement of claim or application which does not contain the said particulars, he may direct the supply, without payment of fee, of a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy and the question in dispute in the suit or application.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—J udicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 141—148.).

(5) Where, since the record-of-rights was prepared and finally [1885, s. 148 published, an alteration has been made in the area of the tenancy, (b 2) & Notfn.] the statement required by clause (ii) of sub-section (2) must also show the rental of the original tenancy according to the record-of-rights, and the statement of claim must further show how the amount of the rent claimed in the suit has been calculated.

Substitution of copies or extracts for original documents admitted in evidence.

141. When any account-books, rent-rolls, collection-papers, measurement-papers or maps have been produced by the landlord before the Deputy Commissioner in any suit or proceeding under this Act, and have been admitted in evidence in the suit or proceeding or in any inquiry pending before the Deputy Commissioner, copies of, or extracts from, such documents, certified by a duly authorized Officer of the Court of the Deputy Commissioner to be true copies or extracts, may, with the permission of the Deputy Commissioner, be substituted on the record for the originals, which may then be returned to the landlord;

and thereafter copies or extracts, so certified, may be admitted in evidence in any other suit or proceeding instituted before the same or any other Deputy Commissioner under this Act, unless the Deputy Commissioner before whom they are produced sees fit to require the production of the originals.

Statement of claim by whom to be presented.

142. The statement of claim shall be presented by the [1879, s. 49.] plaintiff, or by an agent of the plaintiff who is acquainted with the facts of the case.

Signature and verification of statement of claim.

143. The statement of claim shall be subscribed and verified [1879, s. 50.] at the foot, by the plaintiff or his agent, in the following form:—

“I, A B, do declare that the above statement is true to the best of my knowledge, information and belief.”

Production of documents by plaintiff.

144. (1) If the plaintiff relies in support of his claim on any [1879, s. 51.] document in his possession, he must produce such document before the Deputy Commissioner at the time of presenting his statement of claim.

(2) If such document be not so delivered, it shall not afterwards be admitted unless the Deputy Commissioner, for sufficient reasons to be recorded in writing, thinks fit to admit it.

Production of documents by defendant.

145. If the plaintiff requires the production of any document [1879, s. 52.] in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver a description of the document to the Deputy Commissioner, in order that the defendant may be directed to produce the document.

Return or amendment of statement of claim.

146. If the statement of claim does not contain the several [1879, s. 53.] particulars required by section 139 or by sections 139 and 140, as the case may be, or is not subscribed and verified as required by section 143, the Deputy Commissioner may return the statement to the plaintiff, or may at his discretion allow it to be amended.

Issue of summons to defendant.

147. If the statement of claim is in proper form, the Deputy [1879, s. 54.] Commissioner shall direct the issue of a summons to the defendant, in the prescribed form.

Attendance of defendant personally or by agent.

148. If the plaintiff requires the personal attendance of the [1879, s. 54.] defendant, and satisfies the Deputy Commissioner that such personal attendance is necessary, or if the Deputy Commissioner of his own accord requires such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent who is acquainted with the facts of the case.

The Chota Nagpur Tenancy Bill, 1908.(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 149—157A.*)

Production of documents and witnesses.

149. (1) [Omitted.]

(2) The said summons shall order the defendant to produce any [1879, s. 55.] document which he has in his possession and of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence; and shall also enjoin the defendant to bring his witnesses with him if they are willing to attend without issue of process.

150. [Omitted.]

Deposit of cost of serving summons or warrant.

151. (1) (Transferred to clause 253.)

[1879, s. 56.]

(2) If the amount of the cost of serving the summons be not deposited in the prescribed manner, the claim shall be rejected; but in such case the plaintiff may present another statement of claim at any time within the period provided by this Act for the limitation of suits.

152, 153, 154. [Omitted.]

Procedure when neither party appears on day of trial.

155. If, on the day fixed by the summons for the appearance [1879, s. 62.] of the defendant, or on any subsequent day to which the hearing of the case may be postponed prior to the framing of issues as provided in section 168, neither of the parties appears in person or by agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the provisions for the limitation of suits contained in this Act.

Procedure when only the defendant appears.

156. If, on such day, only the defendant appears, the [1879, s. 63. Act XIV of 1852, s. 102.] Deputy Commissioner shall dismiss the suit, unless the defendant admits the claim or part thereof, in which case the Deputy Commissioner shall pass a decree against the defendant upon such admission, without costs, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder:

Provided that such decree, if there be more than one defendant, shall be only against the defendant who makes the admission.

Procedure when only the plaintiff appears.

157. If, on such day, only the plaintiff appears, the [1879, s. 64.] Deputy Commissioner, upon proof that the summons has been duly served, shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff and any documentary or oral evidence adduced by him, may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness whom the plaintiff may wish to call, or decree the suit *ex parte* against the defendant.

Production of documents by defendant.

157A. If the defendant relies on any document in support of [1879, s. 71.] his defence, he shall produce it before the Deputy Commissioner at the first hearing of the suit; and, if such document is not so produced, it shall not afterwards be admitted, unless the Deputy Commissioner, for sufficient reasons to be recorded in writing, thinks fit to admit it.

The Chota Nagpur Tenancy Bill, 1908.

(*Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 158—165.*)

Hearing of defendant on day to which case is postponed.

158. If the defendant appears on any subsequent day to [1879, s. 65.] which the hearing of the suit may be postponed under section 157, the Deputy Commissioner may, upon such conditions (if any) as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

161. [Omitted]

Exemption of women from personal attendance.

162. A female plaintiff or defendant shall not be required [1879, s. 79.] to attend in person if of a rank or class which, according to the customs and manners of the country, would render it improper for her to appear in public.

Employment agents.

163. (1) Any party to a suit before the Deputy Commissioner [1879, ss. 78, 80.] under this Act may employ an agent to conduct the case on his behalf; but the appointment of an agent shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or by any order of the Deputy Commissioner.

(2) Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if they had been served on the party in person; and all the provisions of this Act relating to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

Power to grant time or adjourn hearing.

164. The Deputy Commissioner may in any case grant time [1879, s. 81.] to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to secure further evidence, or for other sufficient reason to be recorded by him, adjourn the hearing or further hearing of any case in such manner as he may think fit.

Examination and cross-examination of parties or their agents and of witnesses.

165. (1) When both parties appear in person on the day [1879, ss. 68, 70.] named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned under section 164, the Deputy Commissioner shall proceed to examine them, and either party or his agent may cross-examine the other.

(2) If either of the parties is not bound to attend personally, any agent by whom he appears shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

(3) At his first appearance, or at any time before the issues are framed, the defendant may, with the leave of the Deputy Commissioner, file a written statement of his defence.

(4) Such statement shall be verified in the manner provided in section 143.

(5) If either of the parties produces a witness on the day aforesaid, the Deputy Commissioner may take the evidence of such witness.

The Chota Nagpur Tenancy and Settlement Bill, 1908.(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 166—171.*)

Conduct and record of examination. 166. (1) The examination of the parties or their agents [1879, s. 69.] shall be conducted according to the law for the time being in force for the examination of witnesses.

(2) The depositions of parties, agents and witnesses shall be recorded in English, or, if the Deputy Commissioner is not sufficiently acquainted with English, then in the vernacular language of the Deputy Commissioner.

Power to direct attendance of party whose agent cannot answer material question. 167. If the agent of either party is unable to answer any [1879, s. 70.] material question relating to the case, which the Deputy Commissioner is of opinion that the party whom he represents ought to answer and is likely to be able to answer if interrogated in person, the Deputy Commissioner may postpone the hearing of the case to a future day, and may direct that such party shall attend in person on such day;

and, if such party fails to appear in person on the day appointed, the Deputy Commissioner may decide the suit as in case of default, or make such other order as he may deem proper in the circumstances of the case.

Decree when to be made. 167A. If, after the examination required by section 165, and [1879, s. 72.] after the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can properly be made without taking further evidence, the Deputy Commissioner shall make a decree accordingly.

Power to postpone trial to take further evidence. 168. If it appears that the parties are at issue on any [1879, s. 74.] question upon which it is necessary to hear further evidence, the Deputy Commissioner shall frame issues, and shall fix a day for the examination of witnesses and the final hearing of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Deputy Commissioner.

Production of witnesses. 168A. The parties shall produce their witnesses on the [1879, s. 75.] day of the trial; and, if either party requires assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Deputy Commissioner in sufficient time before such day to enable the witness to be summoned and to attend on that day; and, if the application be made in sufficient time as aforesaid, the Deputy Commissioner shall issue a summons requiring such witness to attend.

Procedure when neither party appears on day fixed for final hearing of suit. 168B. (1) If, on the day fixed for the final hearing of the [1879, s. 77.] suit, neither of the parties appears, the case shall be struck off under the conditions provided in section 155.

(2) If, on such day, only one of the parties appears, the suit may be tried and determined, in the absence of the other party, upon such proof as may then be before the Court.

Judgment. 171. (1) The Deputy Commissioner shall pronounce judgment in open Court.

(2) The judgment shall be written in English, and shall contain the reasons for the decision, and shall be dated and signed by the Deputy Commissioner at the time when it is pronounced:

Provided that any judgment may be written in the vernacular if the Deputy Commissioner is not sufficiently acquainted with English.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 172—174.*)

Local inquiries.

172. (1) The Deputy Commissioner may, at any stage of a [1879, s. 2.] suit or other proceeding before him under this Act,—

- (a) cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of the Government with the consent of the authority to whom such officer is subordinate, or by any other person whom the Deputy Commissioner may deem fit; or
- (b) himself proceed to the spot and make such local inquiry in person.

(2) The provisions of the law for the time being in force, relating to local inquiries by Commissioners under orders of Civil Courts, shall apply to any local inquiry made under clause (a) of sub-section (1), and, so far as they are applicable, also to inquiries made under clause (b) of that sub-section.

(3) Where the Deputy Commissioner makes a local inquiry in person, he shall, forthwith record on the proceedings any relevant facts which he has observed in the course of the inquiry; and such record shall be received as evidence in the suit or other proceeding aforesaid.

Payment into Court by defendant, after tender to plaintiff.

173. (1) The defendant in any suit before the Deputy Commissioner under this Act may, if he has duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff. [1879, s. 86.]

(2) If, after such payment, the plaintiff elects to proceed with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant; but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with all costs of the suit.

Payment into Court by defendant, without prior tender to plaintiff.

174. (1) The defendant in any suit before the Deputy Commissioner under this Act may, without having tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, together with the costs (to be fixed by the Deputy Commissioner, if necessary, as upon a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff. [1879, s. 84.]

(2) If, after such payment, the plaintiff elects to proceed with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant subsequently to such payment; but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 176—178.*)

Prohibition of interest on sum so paid into Court.

175. From the date on which any sum is paid into Court [1879, s. 85.] by the defendant under section 173 or section 174, no interest shall be allowed to the plaintiff on such sum, whether it be in full satisfaction of his claim or falls short thereof.

Power to award damages to plaintiff in rent-suit.

176. (1) In any suit for rent under this Act, if it appears to [1879, s. 90. Cf. 1885, s. 88.] the Deputy Commissioner that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due from him,

and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court of the Deputy Commissioner under section 56 before the institution of the suit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as the Court may think fit, unless interest due under section 59 is decreed.

(2) Any damages so awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest, from the date of decree until payment thereof, at such rate *per centum* as the Deputy Commissioner deems reasonable.

Power to award compensation to defendant in rent-suit.

177. In any suit for rent under this Act, if it appears to the [1879, s. 91.] Deputy Commissioner that the plaintiff has instituted the suit against the defendant without reasonable or probable cause,

or that the defendant, before the institution of the suit, duly deposited in the Court of the Deputy Commissioner, under section 56, the full amount which the Deputy Commissioner finds to have been due to the plaintiff at the date of such deposit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the defendant, by way of compensation, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as the Deputy Commissioner may think fit.

Procedure where third party claims right to receive rent.

178. When, in any suit before a Deputy Commissioner under this Act between a landlord and a tenant, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the institution of the suit, [1879, s. 87.]

such third person shall be made a party to the suit, and the question of the actual payment of the rent to such third person in good faith shall be inquired into, and the suit shall be decided according to the result of such inquiry :

Provided that such decision shall not affect the right of any party, who may have a legal title to such rent, to establish such title by suit in a Civil Court, if instituted within one year from the date of the decision.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 179—182B.*)

Suit for ejectment of non-occupancy-*raiyat*, or cancellation of lease of other tenant, for arrears of rent.

179. (1) Any landlord desiring to eject a non-occupancy-*raiyat* on the ground that he has failed to pay an arrear of rent, or to cancel the lease of any tenant on account of the non-payment of arrears of rent, may sue for such ejectment or cancellation and for the recovery of the arrears in the same suit, or may, in a suit for such ejectment or cancellation, adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.

[1879, s. 8.]

(2) In all cases of suits for the ejectment of a non-occupancy-*raiyat* for non-payment of arrears of rent, or for the cancellation of a lease for non-payment of arrears of rent, the decree shall specify the amount of the arrear; and if such amount, together with interest and costs of suit, be paid into Court within thirty days from the date of the final decree, the decree shall not be executed.

(3) The Deputy Commissioner may, for special reasons to be recorded in writing, extend the period of thirty days mentioned in sub-section (2).

Power of Deputy Commissioner to grant lease to *raiyat* in default of landlord.

180. If a decree is given for the grant of a lease to a *raiyat*, [1879, s. 92.] and the landlord fails, for a period of three months after the date of the decree, to grant such lease, the Deputy Commissioner may grant a lease, in conformity with the terms of the decree, under his own hand and seal; and such lease shall have the same force and effect as if granted by the landlord.

Procedure where tenant fails to deliver counterpart engagement to landlord.

181. If a decree is given for the delivery of a counterpart [1879, s. 92.] engagement by a tenant to a landlord, and the tenant fails, for a period of three months after the date of the decree, to deliver such counterpart, the decree shall be evidence of the amount of rent claimable from such tenant, and a copy of the decree under the hand and seal of the Deputy Commissioner shall have the same force and effect as a counterpart engagement delivered by the tenant to the landlord.

Execution of Decrees and Orders of the Deputy Commissioner.

Limitation of time for application for execution.

182. No process of execution of any description whatsoever [1879, s. 105.] shall be issued on any decree or order passed by a Deputy Commissioner under this Act, except upon an application made within three years from—

- (a) the date on which the decree or order is signed, or
- (b) where there has been an appeal, the date of the final decree or order of the Appellate Court, or
- (c) where there has been a review of judgment, the date of the decision passed on the review.

Decrees and orders by what Court to be executed.

182A. A decree or order passed by a Deputy Commissioner under this Act may be executed either by his own [Act XIV of 1882, s. 223.] Court or by any other prescribed Court.

Form of application for execution.

182B. Every application for the execution of a decree or order passed by a Deputy Commissioner under this Act shall be in writing, shall be made in the prescribed form, and shall be verified by the applicant or his agent in the form provided in section 143.

[Act XIV of 1882, s. 236.]

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI—Judicial Procedure in matters cognizable by the Deputy Commissioner.—Clauses 183—187.)

Issue of process of execution. 183. Process of execution may be issued against either the [1879, s. 99.] person or the property of a judgment-debtor, but shall not be issued simultaneously against both person and property.

Form of warrant of execution. 183A. Every warrant of execution against the person or moveable property of a judgment-debtor shall be in the prescribed form.

Exemptions from attachment and sale. 183B. The following particulars shall be exempt from attachment and sale in execution of any decree or order passed by a Deputy Commissioner under this Act, [Act XIV of 1882, s. 286, prov.] namely:—

- (a) the necessary wearing apparel and bedding of the judgment-debtor, his wife and children;
- (b) tools and implements of husbandry, and such cattle and seed-grain as may in the opinion of the Deputy Commissioners be necessary to enable the judgment debtor to earn his livelihood as an agriculturist;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) any right of personal service;
- (f) stipends and gratuities allowed to military and civil pensioners of the Government, and political pensions,
- (g) the wages of labourers and domestic servants;
- (h) a right to future maintenance.

Provided that nothing in this section shall be deemed to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent.

Explanation.—The particulars mentioned in clauses (f) and (g) are exempt from attachment or sale whether before or after they are actually payable.

Indication of moveable property to be seized. 184. (1) Any moveable property required to be seized under [1879, s. 100.] a warrant of execution shall, if practicable, be described in a list to be furnished by the judgment-creditor; but, if the creditor is unable to furnish such list, he may apply for a general seizure of the debtor's effects to the amount of the judgment and costs.

(2) In either case, the property to be seized shall be pointed out by the creditor or his agent to the officer entrusted with the execution of the warrant.

Duration of warrant of execution. 185. Every warrant of execution shall bear the date of the [1879, s. 101.] day on which it is signed by the Deputy Commissioner, and shall continue in force for such period as the Deputy Commissioner may direct, not being more than sixty days from such date.

Second and successive warrants of execution. 186. Second and successive warrants of execution may be [1879, s. 102.] issued, by order of the Deputy Commissioner, on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Notice when to be given before issue of warrant of execution. 187. (1) A warrant of execution shall not be issued upon [1879, s. 103.] any decree or order without previous notice to the party against whom execution is applied for, it, when application for the issue of the warrant is made, a period of more than one year has elapsed from the date of the decree or order, or from the date of the last previous application for execution.

The Chota Nagpur Tenancy Bill, 1908.

(*Chapter XVI.—Judicial Procedure in matters cognisable by the Deputy Commissioner.—Clauses 189—191.*)

(2) A warrant of execution shall not be issued against [1879, s. 104.] the heir or other representative of a deceased party without previous notice to such representative to appear and be heard.

188. [*Omitted*].

Procedure when judgment-debtor is arrested. 189. (1) If a warrant is issued against the person of a judgment-debtor, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Deputy Commissioner.

(2) If the decree in execution of which the judgment-debtor was arrested is a decree for money, and if he does not immediately deposit in Court the full amount specified in the warrant, or make arrangements, satisfactory to the judgment-creditor, for the payment of the same, or satisfy the Deputy Commissioner that he has no present means of paying the same,

the Deputy Commissioner shall send him to the civil jail, there to remain for such time as may be directed by warrant addressed to the keeper of the jail, unless in the meantime he pays the said amount:

Provided that no judgment-debtor shall be imprisoned in execution of a decree under this Act for a longer period than six months or (if the decree is for the payment of a sum of money not exceeding fifty rupees) six weeks;

(3) If the decree in execution of which the judgment-debtor was arrested is a decree for the delivery of papers or accounts, and if the papers or accounts are not immediately delivered by him to the Deputy Commissioner,

the Deputy Commissioner may commit him to the civil jail, there to remain for such time, not exceeding six months, as the Deputy Commissioner may direct, unless in the meantime he delivers the papers or accounts according to the terms of the decree.

No second imprisonment under the same decree or order. 190. (1) When any judgment-debtor has been discharged [1879, s. 67.] from the civil jail, he shall not be imprisoned a second time under the same decree or order.

(2) If the amount due under such decree or order does not exceed fifty rupees, the Deputy Commissioner may declare such discharged person to be absolved from liability thereunder.

(3) In other cases the discharge shall not extinguish the liability of the discharged person under such decree or order, or exempt property belonging to him from attachment in execution thereof.

Diet-money for subsistence of prisoners. 191. (1) Any person who applies for a warrant of execution against the person of a judgment-debtor shall deposit in Court, at the time of the issue of the warrant, diet-money for thirty days, at such rate as the Deputy Commissioner may direct, for the subsistence of the prisoner.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 192—197.*)

(2) The said person shall also pay diet-money, at the same [1879, s. 109.] rate, before the commencement of each succeeding month of the imprisonment; and, if he fails to make any such payment, the prisoner shall be discharged.

(3) All diet-money spent in providing subsistence for any [1879, s. 110.] prisoner shall be added to the costs in the suit; and any diet-money not so spent shall be returned to the person who paid it.

Execution of decree or order for ejectment or re-instatement of cultivator. 192. (1) If the decree or order is for the ejectment of any [1879, s. 91.] cultivator from land occupied by him, or for the re-instatement of any cultivator in the occupancy of land from which he has been ejected, the decree or order shall be executed by giving the possession or occupancy of the land to the person entitled by the decree or order to such possession or occupancy.

(2) If any opposition to the execution of the order for giving such possession or occupancy is made by the party against whom the order is made, the Deputy Commissioner shall, in the exercise of his powers as a Magistrate, give effect to the order.

Execution of decree or order for cancellation of lease, or for ejectment or re-instatement of tenant not being an actual cultivator. 193. If the decree or order is for the cancellation of any [1879, s. 95.] lease, or the ejectment of any tenant (not being an actual cultivator), or for the re-instatement of any tenant (not being an actual cultivator) in the possession of a tenancy from which he has been ejected, the decree or order shall be executed—

- (a) by proclaiming its substance to the cultivators or other occupants of the tenancy by beat of drum, or
- (b) by notification reciting the substance of the decree or order and affixed in some conspicuous place within, or adjacent to, the tenancy, or
- (c) in such other manner as may be prescribed.

194. [Omitted.]

Execution of decree for rent given of this Act in favour of a sharer in a joint undivided estate or tenure in favour of sharer for money due to him on account of his share of the rent of any in undivided estate or tenure. 195. If a decree is given by the Deputy Commissioner under [1879, s. 127.]

application for the sale of such tenure shall not be received unless execution has first been taken out against any moveable property which the judgment-debtor may possess within the district in which the suit was instituted, and unless the sale of such property (if any) has proved insufficient to satisfy the decree;

and such tenure may then, with the previous sanction of the Commissioner, but not otherwise, be sold, in execution of the decree, in the manner in which any other immoveable property may be sold in execution of a decree for money under the provisions of sections 196 and 207.

Execution against immovable property, and in certain cases, if judgment not satisfied. 196. In the execution of any decree or order by the Deputy [1879, s. 128.] Commissioner under this Act for the payment of money, not being money due or recoverable as an arrear of rent,

if satisfaction of the decree or order cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted,

the judgment-creditor may apply for execution against any immoveable property belonging to such debtor;

and such immoveable property may, with the sanction of the Commissioner, but not otherwise, be brought to sale in the manner provided in section 207.

Notification of intended sale of moveable property, and custody of property. 197. (1) For the purpose of executing a warrant of execution [1879, s. 111.] issued by the Deputy Commissioner under this Chapter against the moveable property of a judgment-debtor, the officer charged with the execution of the warrant shall prepare a list of the property pointed out by the judgment-creditor; and shall publish a proclamation specifying the day upon which the sale is intended to be held, and a copy of the said list, at the intended place of sale and at the residence of the debtor.

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(2) A copy of the said list and proclamation shall be transmitted to the Deputy Commissioner, and shall be affixed in his office.

(3) Until the day of sale, the said property shall remain in the custody of the officer executing the warrant.

Interval between seizure and sale.

198. No sale of any moveable property (other than perishable property) seized in execution under this Chapter shall be made until the expiration of a period of ten days after the day on which the property was so seized. [1879, s. 117.]

Place and manner of sale.

199. (1) Such sale shall be held at the place where the property is deposited, or at the nearest market or other place of public resort if the officer executing the warrant thinks it is likely to sell there to better advantage. [1879, s. 112.]

(2) The property shall be sold by public auction, in one or more lots as the officer executing the warrant may think advisable; and if the judgment-debt, and the costs of the execution and sale, are realised by the sale of a portion of the property, the execution shall immediately be withdrawn with respect to the remainder.

Prohibition of purchase by officers.

200. Officers executing warrants for the sale of property under this Chapter, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers. [1879, s. 116.]

Postponement of sale if fair price not offered.

201. If, on the property being put up for sale, no price which the officer executing the warrant considers fair is offered for it, and the owner of the property, or some person authorized to act on his behalf, applies to have the sale postponed until the next day, or the next market day if a market be held at the place of sale or in the vicinity, the sale shall be postponed until such day, and shall then be completed at whatever price may be offered for the property. [1879, s. 113.]

Payment of purchase money.

202. (1) The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer executing the warrant may direct; and, in default of such payment, the property shall again be put up and sold.

(2) When the purchase-money has been paid in full, the officer executing the warrant shall deliver the property to the purchaser, with a certificate describing the property and stating the price paid.

Application of proceeds of sale.

203. (1) From the proceeds of the sale, the officer executing the warrant shall make a deduction, at the rate of one anna in the rupee, on account of the costs of the sale, and shall transmit the amount so deducted to the Deputy Commissioner in order that it may be credited to the Government. [1879, s. 115.]

(2) The said officer shall deal with the rest of the proceeds in the prescribed manner.

Procedure where third party claims interest in property seized.

204. (1) If, before the day fixed for the sale, a third party appears before the Deputy Commissioner and claims a right or interest in any of the moveable property seized in execution, the Deputy Commissioner shall examine such party or his agent according to the law for the time being in force relating to the examination of witnesses; and, if he sees sufficient reason for so doing, may stay the sale of such property. [1879, s. 118.]

(2) The Deputy Commissioner shall, after taking evidence, adjudicate upon such claim, and shall make such order thereupon as he thinks fit. [1879, s. 119.]

(3) If the claimant fails to establish his right to the property seized in execution, the Deputy Commissioner may, by his order under sub-section (2), award to the judgment-creditor against the claimant, in addition to the costs of the proceedings, such sum as the Deputy Commissioner may consider sufficient to cover any loss of interest or any other damage which the judgment-creditor has sustained by reason of the postponement of the sale. [1879, s. 120.]

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(Chapter XVI.—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 205—207.)

(4) The party against whom any order is passed by the [1879, s. 21.] Deputy Commissioner under this section may, at any time within one year from the date of the order, bring a suit in the Civil Court to establish his right:

Provided that, if the property has been sold, the suit shall not be for the recovery of the property, but for damages against the judgment-creditor by whom the property was brought to sale.

Irregularities not to vitiate sale. 205. No irregularity in publishing or conducting a sale of [1879, s. 122.] moveable property under a warrant of execution issued under this Chapter shall vitiate such sale; but nothing contained in this section shall bar any person who sustains damage by reason of any such irregularity from recovering damages by suit in the Civil Court, if instituted within one year from the date of the sale.

Sale of tenure or holding in execution of decree for arrears of rent. 206. (1) When a decree passed by the Deputy Commissioner [1879, s. 123, para. 1 to 4.] under this Act is for an arrear of rent due in respect of a tenure or holding, the decree-holder may apply for the sale of such tenure or holding, and the tenure or holding may thereupon be brought to sale, in execution of the decree, according to the provisions for the sale of under-tenures contained in the Bengal Rent Recovery (Under-tenures) Act, 1865; and all the B.R.A. Act VIII of 1865. provisions of that Act, except sections 13, 14 and 15 thereof, shall, as far as may be, apply to such sale:

Provided that the Commissioner may, by order, in any case in which he may consider it desirable so to do,—

- (a) prohibit the sale of any tenure or portion thereof, or
- (b) stay any such sale for any period specified in the order:

Provided also that any sale of a resumable tenure under this section shall not affect the right of the grantor or his successor in title to resume such tenure, but shall be made subject to such right.

(2) When a warrant of execution has been issued under this Chapter against the person or moveable property of the judgment-debtor, no application shall be received under sub-section (1) while such warrant remains in force.

Sale of other property in execution of decree for arrears of rent of tenure or holding. 207. (1) If, after the sale of a tenure or holding in pursuance of section 206, any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the judgment-debtor.

(2) Notwithstanding anything contained in sub-section (1), a decree-holder may, with the permission of the Deputy Commissioner, granted for reasons to be recorded in writing, proceed against any other property, moveable or immoveable, of the judgment-debtor, without first making application for the sale of the tenure or holding in respect of which the arrear has accrued.

(3) Property referred to in sub-sections (1) and (2) may be [1879, s. 123, para. 5.] brought to sale—

(a) if moveable, in the manner provided in sections 197 to 203, and

(b) if immoveable, in the manner provided in sections 237, 238, 274 to 276, 278, 279 to 284, 286, 287, 289 to 294, 305 to 310, 312 to 316, 318, 319, 334 and 335 of the Code of Civil Procedure.

XIV of 1862.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 208—211.*)

Procedure where third party claims to be in lawful possession of tenure or holding. [1879, s. 125.
Act XIV of 1882, s. 279.]

208. (1) If, before the day fixed for the sale of any tenure or holding in pursuance of section 206, a third party appears before the Deputy Commissioner and alleges that he, and not the person against whom the decree has been obtained, was in lawful possession of, or had some interest in, the tenure or holding when the decree was obtained,

the Deputy Commissioner shall examine such party according to the law for the time being in force relating to the examination of witnesses; and if he sees sufficient reason for so doing, and if such party deposits in Court or gives security for the amount of the decree, the Deputy Commissioner shall stay the sale, and shall, after taking evidence, adjudicate upon the claim:

Provided that no such adjudication shall be made if the Deputy Commissioner considers that the claim was designedly or unnecessarily delayed:

Provided also that no transfer of a tenure shall be recognised unless it has been registered in the office of the landlord or sufficient cause for non-registration is shown to the satisfaction of the Deputy Commissioner.

(2) The party against whom judgment is given by the Deputy Commissioner under sub-section (1) may, at any time within one year from the date of the judgment, bring a suit in the Civil Court to establish his right. [1879, s. 126.]

209. [Omitted.]

Application to set aside sale of immoveable property, on deposit of debt and compensation to purchaser. [1879, s. 130A (2).]

210. (1) When any immoveable property has been sold under this Chapter in execution of a decree, any person who owned such property immediately before the sale, or who claims an interest therein under a title lawfully acquired before the sale, may, at any time within a period of thirty days from the date of the sale, apply to have the sale set aside on his depositing in the Court of the Deputy Commissioner,—

(a) for payment to the purchaser—a sum equal to five *per centum* of the purchase-money, and

(b) for payment to the decree-holder—the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation and sale, have been received by the decree-holder:

Provided that, if a person applies under section 211 to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section. [Act XIV of 1882, s. 310A prov.]

(2) If the said deposits are made within the said period, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside. [1879, s. 130A (2).] XIV of 1882.

Application to set aside sale of immoveable property on ground of irregularity. [Act XIV of 1882, s. 311.]

211. (1) When any immoveable property has been sold under this Chapter in execution of a decree, the decree-holder or the person who owned such property immediately before the sale may apply to the Deputy Commissioner to set aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by reason of such irregularity:

Provided that, if a person applies under section 210 to set aside the sale of his immoveable property, he shall not be entitled to make an application under this section.

(2) If an application be made under this section, and if the objection be allowed, the Deputy Commissioner shall pass an order setting aside the sale. [Act XIV of 1882, s. 312, para. 2.]

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 212—217.*)

Grounds on which
suit or application to
set aside sale may be
brought.

212. No suit or application shall be entertained in any Court to set aside, or to modify the effect of, any sale made under this Chapter, save under section 210 or section 211 or on the ground of fraud or want of jurisdiction.

Appeals.

Appeal from orders
of Deputy Commis-
sioners.

213. (1) All orders passed by a Deputy Commissioner under [1879, s. 136.] the foregoing provisions of this Act, not being—

- (a) judgments in suits, or
- (b) orders passed in the course of suits and relating to the trial thereof, or
- (c) orders passed after decree and relating to the execution thereof, or
- (d) orders passed under section 204 or section 208,

shall be appealable—

- (i) to the Commissioner, or
- (ii) if passed by a Deputy Collector exercising powers of a Deputy Commissioner—to the Deputy Commissioner.

(2) No judgment of a Deputy Commissioner in any suit, and no order of a Deputy Commissioner passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

(3) Orders passed after decree and relating to the execution thereof (except orders passed under section 204 or section 208) shall be appealable to the Court to which an appeal from the decree itself would lie.

Limitation
of
appeals from
such
orders.

214. Every appeal under section 213 shall be presented [1879, s. 136, para. 1.] to the Commissioner or the Deputy Commissioner, as the case [para. 1.] may be, within thirty days from the date of the order.

Bar to further
appeals, with proviso
for revision by Board
or Commissioner.

215. Orders passed by the Commissioner or Deputy Commis- [1879, s. 136, para. 2.] sioner in appeals preferred under section 213 shall not be open to any further appeal; but the Board or (in the case of appeals decided by the Deputy Commissioner) the Commissioner may call for any case and pass such orders thereon as it or he may think proper.

Bar to appeal in
certain suits.

216. (1) In suits referred to in clause (2) or clause (7) of section 134, tried and decided by a Deputy Commissioner, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final, and not open to revision or appeal except as provided in sub-section (2), unless in any such suit a question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in section 221.

(2) When any such suit in which, if tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Deputy Commissioner.

Appeal to Deputy
Commissioner when
to be presented.

217. Every petition of appeal to the Deputy Commissioner [1879, s. 140.] under section 216, sub-section (2), shall be presented within thirty days from the date on which the decree appealed against was signed.

*The Chota Nagpur Tenancy Bill, 1908.**(Chapter XVI—Judicial Procedure in matters cognizable by the Deputy Commissioner—Clauses 218—222.)*

Appeal when to be heard.

218. (1) The Deputy Commissioner or the Commissioner [1879, s. 141.] as the case may be, shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent.

(2) If, on the day fixed for hearing the appeal, or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by agent, the appeal shall be dismissed for default.

(3) If on such day the appellant appears and the respondent does not appear in person or by agent, the appeal shall be heard *ex parte*.

Re-admission appeal.

219. If an appeal is dismissed for default of prosecution, [1879, s. 142.] the appellant may, within thirty days from the date of the dismissal, apply to the Deputy Commissioner or the Commissioner, as the case may be, for the re-admission of the appeal; and, if it is proved to the satisfaction of the Deputy Commissioner or the Commissioner, as the case may be, that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Deputy Commissioner or the Commissioner, as the case may be, may re-admit the appeal.

Re-hearing of appeal on application of respondent against whom ex-parte decree passed.

219A. When an appeal is heard *ex parte* in the absence [Act XIV of 1882, s. 560.] of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that notice was not duly served on him or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Judgment in appeal.

220. After hearing the appeal, the Deputy Commissioner [1879, s. 143.] or the Commissioner, as the case may be, shall give judgment in the manner provided in section 171 for giving judgment in original suits.

Appeal to Judicial Commissioner or High Court.

221. (1) In all suits before a Deputy Commissioner under [1879, s. 144.] this Act, except—

(a) suits in which, when tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner is declared by section 216, sub-section (1), to be final, and

(b) suits in which, when tried and decided by a Deputy Collector, an appeal is allowed by section 216, sub-section (2), to the Deputy Commissioner,

an appeal from the judgment of the Deputy Commissioner or Deputy Collector shall lie to the Judicial Commissioner, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court.

(2) A second appeal shall lie to the High Court, under Chapter XLII of the Code of Civil Procedure, from any appellate decree passed by the Judicial Commissioner under this Chapter, or from any order passed by him on appeal under section 213, sub-section (3).

Hearing of appeals by Judicial Commissioner, instead of by Deputy Commissioner.

222. (1) Where, in analogous suits, some appeals have been [1879, s. 144A.] presented to the Deputy Commissioner and others to the Judicial Commissioner, the Judicial Commissioner may, on the application of any of the parties, transfer to his own Court the appeals pending in the Court of the Deputy Commissioner.

(2) Where, in analogous suits, some appeals lie to the Deputy Commissioner and others to the Judicial Commissioner, a plaintiff or defendant whose appeal would ordinarily lie to the Deputy Commissioner may, if an appeal in any such suit has been presented by any other plaintiff or defendant to the Judicial Commissioner and admitted, present his appeal to the Judicial Commissioner instead of to the Deputy Commissioner, and the Judicial Commissioner may hear and decide the same.

XIV of 1882.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVI.—*Judicial Procedure in matters cognizable by the Deputy Commissioner.*—Chapter XVII.—*Limitation.*—*Clauses 223—231.*)

Limitation of appeal to Judicial Commissioner or High Court. 223. Appeals to the Judicial Commissioner or to the High Court under this Chapter shall be presented within the time prescribed for the presentation of appeals to a District Judge or the High Court, as the case may be, under the Code of Civil Procedure by the law for the time being in force for the initiation of appeals. [1879, c. 1st.]

Power to set aside judgment or order passed ex parte or by default. 224. (1) No appeal by a plaintiff or defendant shall lie from a judgment or order passed against him by default for non-appearance, whether such judgment or order were given under section 155, section 156, section 157 or section 168B. [1879, c. 66.]

(2) If the party against whom any such judgment or order has been given appears, either in person or by agent,—

(a) if a plaintiff, within thirty days from the date of the Deputy Commissioner's order, and,
(b) if a defendant, within thirty days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Deputy Commissioner that there has been a failure of justice, the Deputy Commissioner may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and set aside the judgment or order.

(3) No judgment or order shall be altered or set aside under sub-section (2) without previously summoning the opposite party to appear and be heard in support of it.

Order to set aside judgment final, but rejection of application to set aside appealable. 225. In all cases in which the Deputy Commissioner, under section 224, passes an order setting aside a judgment or order, the order shall be final; but, in all appealable cases in which the Deputy Commissioner, under that section, rejects an application for setting aside a judgment or order, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision. [1879, c. 67.]

Application of section 561 of the Code of Civil Procedure. 226. The provisions of section 561 of the Code of Civil Procedure shall, so far as applicable, apply to all appeals under this Act from decisions of the Deputy Commissioner. [1879, c. 145A. (2).] X1V of 1882.

CHAPTER XVII.**LIMITATION.**

Application of the Indian Limitation Act, 1877. 227. The provisions of the Indian Limitation Act, 1877, shall, so far as they are not inconsistent with this Act, apply to all suits, appeals and applications under this Act. [1885, c. 186] XV of 1877.

General rule of limitation. 228. All suits and applications instituted or made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be commenced and made, respectively, within one year from the date of the accruing of the cause of action: [1879 c. 42.]

Provided that there shall be no period of limitation for applications under section 26, 30, 33, 51, 61A, 75, 104 or 119.

Limitation of suits and applications for grant of leases, etc. 229. Suits and applications for the delivery of leases or counterpart engagements, or for the determination of the rates of rent payable for lands held by a tenant, may be instituted and made, respectively, at any time during the tenancy. [1879, c. 43.]

Limitation of suits and applications for recovery of arrears of rent. 230. Suits, and applications under section 240, for the recovery of arrears of rent shall be instituted within three years from the end of the agricultural year in which the arrear became due. [1879 c. 44.]

Successive suits or applications for recovery of rent. 231. (1) Where a landlord has instituted a suit against a tenant or applied for a certificate under section 240 against a Mundari khunt-kattidar, for the recovery of any rent of his tenancy, the landlord shall not institute another suit or apply for another such certificate against him for the recovery of any rent of that tenancy until after six months from the date of the institution or making of the previous suit or application. [1879, c. 44A.]

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XVII.—Limitation.—Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clauses 232—236.)

(2) Nothing in sub section (1) shall prohibit a fresh suit [1879, s. 15.] for rent when a former suit has been withdrawn with leave to sue again, or when a claim has been rejected under section 151, or when a case has been struck off under section 155 or section 168B.

Limitation of suits
against agents for
money, accounts or
papers.

232. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency, of such agent:

Provided that, if the person having the right to sue has, by fraud, been kept from knowledge of the receipt of any such money by the agent, or if any fraudulent account has been rendered by the agent, the suit may be brought within one year from the time when the fraud first became known to such person; but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

Applications for
recovery of posses-
sion of holding.

233. Applications for the recovery of possession of a holding, or any portion thereof, from which an occupancy-riyat has been unlawfully ejected must be instituted within three years from the date of such ejection.

Suits or applications
for recovery of posses-
sion of village.

234. Suits or applications for recovery of possession of a village by a village headman, whether known as a pradhan, manjhi or otherwise, against a landlord or any person holding by virtue of any assignment from a landlord, must be instituted or made within three years from the date of dispossession.

CHAPTER XVIII.

SPECIAL PROVISIONS WITH RESPECT TO MUNDARI
KHUNT-KATTIDARS.

Application of
preceding sections
to Mundari khunt-
kattidari tenancies.

235. Such of the preceding sections as are applicable to [1879, s. 151.] Mundari khunt-kattidars shall, in their application to such persons and their tenancies, be read subject to the provisions of the following sections in this Chapter.

Restrictions on
transfer of Mundari
khunt-kattidari
tenancies.

236. (1) No Mundari khunt-kattidari tenancy or portion [1879, s. 152.] thereof shall be transferable by sale, whether in execution of a decree or order of a Court or otherwise:

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903, the sale may be made with the previous sanction of the Deputy Commissioner. Ben. Act V of 1903.

(2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements as he may consider suitable for liquidating the debt.

(3) No mortgage of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years.

(4) No lease of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely:—

(a) mukarari leases of uncultivated land, when granted to a Mundari or a group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation;

(b) leases of uncultivated land, when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat;

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(*Chapter XVIII.—Special provisions with respect to Mundari khunt-kattidars.—Clauses 237—239.*)

Explanation.—The expression “uncultivated land,” as used in this sub-section, includes land which, though formerly cultivated, is not, at the time the lease is granted, either under cultivation or in the occupation of the lessee for purposes of cultivation.

(5) Where a Mundari khunt-kattidari tenancy is held by a group of Mundari khunt-kattidars, no bhugut bandha mortgage or mukarari lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the Mundari khunt-kattidars,

(6) No transfer of a Mundari khunt-kattidari tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-sections, shall be valid; and no such contract or agreement shall be registered.

(7) Nothing in the foregoing sub-sections shall affect any sale or, except as declared in the proviso to sub-section (1), any mortgage, or any lease, made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1908.

*Ben. Act V
of 1908.*

Transfer for certain purposes.

237. (1) Notwithstanding anything contained in section 236, a Mundari khunt-kattidar may, without the consent of his landlord, transfer the land comprised in his tenancy, or any part thereof, for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose:

Provided that the transfer shall be made by registered deed, and that, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner shall be obtained to the terms of the deed and to the transfer.

(2) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that the landlord and other co-sharers in the tenancy are adequately compensated for the loss (if any) caused to them by the transfer; and, where only part of the land comprised in the tenancy is transferred, may, if he thinks fit, apportion between the transferee and the original tenant all dues payable for the tenancy.

(3) An appeal against any order of a Deputy Commissioner consenting or refusing to consent to any such transfer shall lie as provided in Chapter XVI.

Ejectment of persons unlawfully obtaining possession of such tenancies. 238. If any person obtains possession of a Mundari khunt-kattidari tenancy or any portion thereof, in contravention of the provisions of section 236, the Deputy Commissioner may eject him therefrom;

and if the tenancy was, before such possession was obtained, entered as a Mundari khunt-kattidari tenancy in a record-of-rights finally published under this Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court in respect of such ejectment; but an appeal shall lie as provided in Chapter XVI.

Enhancement of rent. 239. (1) The rent of a Mundari khunt-kattidari tenancy may be enhanced only—

(a) by an order of the Deputy Commissioner, and

(b) if it be shown before the Deputy Commissioner that the tenancy was created within a period of twenty years immediately preceding the presentation of the petition for enhancement.

(2) An order of the Deputy Commissioner under sub-section (1) shall not enhance the rent of any such tenancy to an amount which would exceed one-half of the rent which would be payable for the land if it were held by a raiyat having a right of occupancy therein.

The Chota Nagpur Tenancy Bill, 1908.

(*Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clause 240.*)

(5) The provisions of sections 26 to 28 shall be applicable to proceedings for the enhancement of the rent of a Mundari khunt-kattidari tenancy.

Recovery of arrears of rent under the certificate procedure, where there is a record-of-rights.

240. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which a record-of-rights has been prepared under this Act or under any law in force before the commencement of this Act,

no suit shall be maintainable in any Court for the recovery of the arrear; but the landlord may apply in writing to the Deputy Commissioner to make a certificate authorising the recovery thereof, with simple interest not exceeding twelve-and-a-half, or (in the case of money recoverable under the Cess Act, 1880) at twelve-and-a-half, *per centum per annum*, under the Public Demands Recovery Act, 1895.

Ben. Act IX of 1880.
Ben. Act I of 1895.

(2) Upon receiving any such application, the Deputy Commissioner may, after making such inquiry and taking such evidence as he may consider necessary, make a certificate as aforesaid.

(3) The person in whose favour any such certificate is made shall be deemed to be the decree-holder for the amount mentioned in the certificate, and the person against whom the certificate is made shall be deemed to be the judgment-debtor for the said amount; and all proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and on his responsibility, and not otherwise.

(4) Every such certificate shall have the same effect as a certificate made under section 7 of the said Public Demands Recovery Act, 1895; and the following portions of that Act shall be applicable, namely, the proviso to section 7, sub-section (1); section 9, sub-sections (2) and (3); section 10, sub-section (1); and sections 11 to 14, 18, 19, 22 and 24 to 33:

Ben. Act I of 1895.

Provided as follows:—

(a) subject to the provisions of section 244, a certificate made under this section may be enforced only by the attachment and sale of the moveable property of the person against whom the certificate is made, or by the attachment and realisation of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes; and

(b) no objection by any third person to the attachment or sale of crops shall be entertained, except—

(i) an objection, by a mortgagee holding under a bhugut bandha mortgage, that the judgment-debtor has other moveable property or assets from which the sum due can be realised; or

(ii) an objection, by a lessee holding under a mukarrari lease as described in section 236, clause (a), that the land in respect of which the arrear accrued is included in his lease, and that the judgment-debtor has other moveable property or assets from which the sum due can be realised; or

(iii) an objection, by a cultivator, that he is in possession of the land in respect of which the arrear accrued, that the land is recorded in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired such possession, and that the judgment-debtor has other moveable property or assets from which the sum due can be realised; or

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(*Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Clauses 241—245.*)

iv) an objection, by such third person, that the land on which such crops were or are standing is entered in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was made.

(5) The provisions of sections 182 to 205 shall, so far as they may be applicable, apply to proceedings under sub-section (4).

(6) If no appeal is presented under section 32 of the Public Demands Recovery Act, 1895, or if any such appeal is decided against the judgment-debtor, the certificate shall become absolute, and shall have the same force and effect as a final decree of a Civil Court. Ben. Act I of 1895.

(7) Notwithstanding anything hereinbefore contained, the Deputy Commissioner may, in any case, by written order setting forth the reasons therefor, refuse to make a certificate as aforesaid, or stay for any specified period the execution of any certificate which has been made.

(8) An appeal from any order made under sub-section (7), shall lie as provided in Chapter XVI.

Reference of question of title to Civil Court. 241. If, in the course of any proceedings under section 240, [1879, s. 156.] any question of title is raised which could, in the opinion of the Deputy Commissioner, more properly be determined by a Civil Court, the Deputy Commissioner shall refer such question to the principal Civil Court in the district for determination.

Recovery of arrear of rent by suit where there is no record-of-rights. 242. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which no record-of-rights has been prepared, the landlord may institute a suit for the recovery of the arrear. [1879, s. 157.]

(2) Subject to the provisions of section 244, a decree or order made in any such suit may be enforced only by the attachment and sale of the moveable property of the defendant, or by the attachment and realisation of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes.

Joiner of parties in proceedings under section 240 or 242. 243. Where a Mundari khunt-kattidari tenancy is held [1879, s. 158.] jointly by a group of khunt-kattidars,

and an objection to the making of a certificate under section 240, or to the execution thereof, or to the maintenance of a suit under section 242, is made on the ground that all the khunt-kattidars have not been made parties to the proceedings,

the objection shall not be entertained if it be shown that other khunt-kattidars could not be made parties without undue delay or expense.

Recovery of money due to the Government or a landlord. 244. Where a decree, or a certificate under the Public Demands Recovery Act, 1895, has been made against a Mundari khunt-kattidar for any money due to the Government or for rent due to a landlord, the Deputy Commissioner may attach the land occupied by him and make such arrangements as the Deputy Commissioner may consider suitable for liquidating the debt. Ben. Act I of 1895.

Recovery of contributions from co-sharer tenants. 244A. When a Mundari khunt-kattidar has paid the rent of his tenancy, including portions thereof due from his co-sharers or any of them, the said portions may, if the proportions due by such co-sharers are definitely stated in a record-of-rights prepared under this Act or under any law in force before the commencement of this Act, be recovered by him, with interest, under the procedure provided by section 240, as if they were an arrear of rent due to a landlord.

Entry of Mundari khunt-kattidari tenancies in record-of-rights. 245. All Mundari khunt-kattidari tenancies shall be so [1879, s. 159.] described in any record-of-rights prepared under Chapter XII.

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(*Chapter XVIII.—Special provisions with respect to Mundari Khunt-Kattidars.—Chapter XIX.—Supplemental Provisions.—Clauses 245 A—252.*)

Bar to suits under section 86.

245A. No suit shall be entertained under section 86 for the decision of any dispute regarding any entry relating to a Mundari khunt-kattidari tenancy in a record-of-rights.

Decision of disputes regarding entries or omissions in record-of-rights.

246. (1) At any time within three months from the date [1879, s. 10.] of the certificate of the final publication of the record-of-rights under this Act, or under any law in force before the commencement of this Act, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry of a Mundari khunt-kattidari tenancy or the incidents thereof in the record, or regarding any omission to enter such a tenancy or any incident thereof in the record; and the Revenue-officer shall hear and decide the dispute.

(2) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 256, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

Appeal against such decisions.

247. An appeal shall lie, in the prescribed manner and [1879, s. 161.] and to the prescribed officer, from any decision of a Revenue-officer under section 246.

Entry of decision in record-of-rights.

248. Whenever a suit instituted under section 246 has been [1879, s. 162.] finally decided, a note of the decision shall be made in the record-of-rights, as finally published, by the Revenue-officer referred to in that section; and such note shall be considered as part of the record.

In preparing record-of-rights, judgments, etc., in suits not to be taken as 1885, in respect of any local area, estate, tenure or part thereof, evidence that tenancies are or are not Mundari khunt-kattidari tenancies.

249. When an order has been issued under section 79 of [1879, s. 163.] this Act, or under section 101 of the Bengal Tenancy Act, VIII of 1885, in respect of any local area, estate, tenure or part thereof, no judgment, decree or order in any suit instituted thereafter shall be taken as evidence,

in any inquiry made by a Revenue-officer engaged in the preparation of a record-of-rights for such area, estate, tenure or VIII of 1885, part, under Chapter XII of this Act, or under Chapter X of the said Bengal Tenancy Act, 1885,

respecting any claim that any tenancy within that area, estate, tenure or part is or is not a Mundari khunt-kattidari tenancy.

Record-of-rights to be conclusive evidence on the question whether a tenancy is a Mundari khunt-kattidari tenancy.

250. When a record-of-rights has been finally published [1879, s. 164.] under section 82 of this Act, or under sub-section (2) of Ben. Act V section 103A of the Bengal Tenancy Act, 1885, or amended of 1905, s. 2.] under section 248 of this Act, VIII of 1885.

the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such tenancies and of all particulars recorded in such entries;

and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any Court to show that such tenancy is a Mundari khunt-kattidari tenancy.

CHAPTER XIX.

SUPPLEMENTAL PROVISIONS.

Bar to suits.

Bar to suits in certain cases.

251. Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside, either directly or indirectly, any order or decree of any Deputy Commissioner or Revenue-officer in any suit or proceeding under section 27, section 31, section 34, section 42, section 47, sub-section (4), section 50, section 51, section 55, section 61A, section 62, section 66, section 73, section 75, section 85, section 86, section 88, section 89 or section 90 (proviso), or under Chapter XIII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of jurisdiction.

Process.

Mode of service.

252. Every notice, summons or other process under this Act required to be served on any person shall be served in the 1879, s. 149.] prescribed manner.

The Oota Nagpur Tenancy Bill, 1908.(Chapter XIX.—*Supplemental Provisions—Clauses 253—256.*)

Authentication and payment of costs.

253. Every process issued by a Deputy Commissioner or ^[1870, s. 56, 184.] Revenue-officer under this Act shall bear his seal and signature; and the cost of serving the same shall be paid by such person and in such manner as may be prescribed.

Costs in suits and applications.

253A. The provisions of Chapter XVIII of the Code of Civil Procedure shall apply to all suits and applications ^[XIV of 1882.] under this Act.

Deposit of costs of proceedings to be incurred by the Government.

253B. (1) A Revenue-officer or Deputy Commissioner ^[1897, s. 11.] may, subject to any directions given by the Local Government, require any plaintiff or applicant to deposit in advance the whole or any part of the estimated amount of the expenses to be incurred by the Government in any proceedings under this Act.

(2) If the amount so deposited by any person exceeds the sum finally made payable by him as costs, the excess shall be refunded to him when the proceedings are completed.

Production of Witnesses and Documents.

Production of witnesses and documents.

254. For the purposes of any inquiry under this Act, any Deputy Commissioner or Revenue-officer shall have power to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the case of a Court by the Code ^[XIV of 1882.] of Civil Procedure.

255. [Omitted.]

Rules and Notifications.

Power to make rules to carry out objects of Act.

256. (1) The Local Government may make rules to ^[1885, s. 189 & Notfn. 1897, s. 13 (1), (2).] carry out the objects of this Act.

(2) In particular, and without prejudice to the generality of sub-section (1), the Local Government may make rules—

- (i) to prescribe particulars to be specified, in pursuance of clause (a) of section 26, in applications for the enhancement of the rent of occupancy holdings;
- (ii) to limit the enhancement of the rent of occupancy holdings under section 27;
- (iii) to prescribe particulars to be specified, in pursuance of clause (i) of section 30, in applications for increase of rent in respect of increase in the area of land held by occupancy raiyats;
- (iv) to prescribe particulars to be specified, in pursuance of clause (ii) of section 33, in applications for the reduction of rent paid by occupancy raiyats;
- (v) to prescribe the manner in which the possession of land should be given under section 47, sub-section (4), section 51, sub-section (2), section 71 or section 73;
- (vi) to prescribe the manner in which landlords shall send notices to the Deputy Commissioner under section 73, sub-section (2);
- (vii) to prescribe the manner in which rents shall be settled under section 84;
- (viii) to prescribe the officer to whom and the manner in which appeals shall lie from orders or decisions passed by Revenue-officers under section 61A., section 84, section 86, Chapter XIII, Chapter XIV, Chapter XV or section 247;

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XIX.—Supplemental Provisions—Clause 256.)

- (ix) to regulate the transfer of cases to Civil Courts under the first proviso to section 86;
- (x) to prescribe the manner in which records-of-rights shall be revised in pursuance of a direction given under section 98;
- (xi) to declare the restrictions or modifications (if any) subject to which the provisions of Chapter XII shall apply to the revision of records-of-rights or the settlement of rents in pursuance of a direction given under section 98;
- (xii) to prescribe particulars to be contained in a record prepared under section 105;
- (xiii) to prescribe the form of statements prepared under section 110, clause (1);
- (xiv) to prescribe the manner in which copies of entries in records prepared under Chapter XV shall be served section 124;
- (xv) to regulate the exercise of the right conferred by section 136 to bring collective suits or make collective applications;
- (xvi) to prescribe the Court by which decrees or orders passed by a Deputy Commissioner under this Act may be executed;
- (xvii) to prescribe the form of applications for the execution of decrees or orders passed by a Deputy Commissioner under this Act;
- (xviii) to prescribe the manner of executing decrees or orders referred to in section 193;
- (xix) to prescribe the manner of dealing with sale proceeds under section 203, sub-section (2);
- (xx) to prescribe the manner of service of notices, summonses and other processes, and of publication of notices, issued under this Act;
- (xxi) to declare by what person and in what manner the cost of serving processes issued by a Deputy Commissioner or a Revenue-officer under this Act shall be paid;
- (xxii) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may, by such rules, confer upon any such officer—
 - (i) any power exercised by a Civil Court in the trial of suits;
 - (ii) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; Bengal Survey Act, 1875. and
 - (iii) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil;
- (xxiii) to prescribe the forms to be used under this Act;
- (xxiv) to prescribe the procedure to be followed and the information to be given by any party or applicant in any proceeding under this Act.

The Chota Nagpur Tenancy Bill, 1908.

(Chapter XIX.—Supplemental Provisions—Clauses 257—262.)

Power to make rules as to procedure, and application of the Code of Civil Procedure.

257. (1) The Local Government may, with the previous sanction of the Government of India, make rules for regulating the procedure of the Deputy Commissioner in matters under this Act for which a procedure is not provided hereby, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before the Deputy Commissioner.

(1a) When any provision of the said Code is applied by such rules, the rules may further declare that any provision of this Act which is superseded by, or is inconsistent with, such provision shall be deemed to be repealed.

(2) Until rules are made under sub-section (1), and subject to those rules when made and to the other provisions of this Act, the provisions of the Code of Civil Procedure relating to—

- (a) the substitution and addition of parties,
- (b) the amendment of plaints,
- (c) the production of documents,
- (d) the attendance, remuneration, punishment and examination of witnesses,
- (e) the amendment of decrees,
- (f) commissions to examine witnesses,
- (g) commissions for local investigations,
- (h) attachment before judgment,
- (i) arbitration, and
- (k) review of judgment

shall, so far as may be, and in so far as they are not inconsistent with this Act, apply to all suits, appeals and proceedings before the Deputy Commissioner under this Act, and to all appeals from decisions passed in such suits or proceedings.

Publication of rules in draft.

258. (1) All powers conferred by this Act for making rules are subject to the condition that the rules be made after previous publication.

(2) Sub-section (1) shall not apply to any rules made and published in the Calcutta Gazette within a period of two months from the commencement of this Act; but all rules so made and published shall be re-issued, after previous publication, and with such amendments (if any) as the Local Government may consider necessary, within a period of one year from such commencement.

Publication and effect of rules and notifications.

259. All rules made, and notifications issued, under this Act shall be published in the Calcutta Gazette, and on such publication shall have effect as if enacted in this Act.

Recovery of dues.

260. (1) Costs and interest awarded under this Act in rent suits, and damages awarded under section 176, shall be recoverable in any manner provided in Chapter XVI for the recovery of money.

(2) All costs, interest and damages not referred to in sub-section (1), and all compensation, fines and penalties, awarded or imposed under this Act, shall be recoverable in the manner provided in Chapter XVI for the recovery of money (not being arrears of rent) due under decree.

Transfer of cases from one Revenue-officer to another.

Control over Deputy Commissioners and Deputy Collectors.

261. A Revenue-officer may, at any time, transfer any pending suit, application or proceeding under this Act from the file of any Revenue-officer acting under this Act to the file of any other Revenue-officer so acting who is duly authorised to entertain and decide such suit, application or proceeding.

262. In the performance of their duties and the exercise of their powers under this Act, Deputy Commissioners shall be subject to the general direction and control of the Commissioner and the Board, and Deputy Collectors exercising functions of the Deputy Commissioner shall also be subject to the direction and control of the Deputy Commissioner.

263. [Omitted.]

The Chota Nagpur Tenancy Bill, 1908.

(*Chapter XIX.—Supplemental Provisions—Clause 264.—Saving of Special Enactments. Schedules A and B.*)

Saving of special
enactments.

264. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act; or
- (b) any other special or local law not repealed, either expressly or by necessary implication, by this Act.

(1885, s. 196
(a), (f) and
Notn.)

SCHEDEULE A.

ACTS AND NOTIFICATION REPEALED IN THE CHOTA NAGPUR DIVISION, EXCEPT THE DISTRICT OF MANBHAM.

[See section 2(1).]

Acts of the Bengal Council.	
1	2
No. and year.	Short title.
I of 1879 ...	The Chota Nagpur Landlord and Tenant Procedure Act.
IV of 1897 ...	The Chota Nagpur Commutation Act, 1897.
V of 1903 ...	The Chota Nagpur Tenancy (Amendment) Act, 1903.
V of 1905 ...	The Chota Nagpur Tenancy (Amendment) Act, 1905.
VIII of 1879 ...	The Bengal Rent Settlement Act, 1879.

Notification.	
Notification No. 1379L.R., dated the 5th March, 1908, published in the Calcutta Gazette of the 11th idem, Part I, page 631, and in the Gazette of India of the 21st idem, Part I, page 214.	

SCHEDEULE B.

ACTS PROSPECTIVELY REPEALED IN THE DISTRICT OF MANBHAM.

[See section 2(2).]

1	2
No. and year.	Short title.
<i>Act of the Governor General of India in Council.</i>	
X of 1859 ...	The Bengal Rent Act, 1859.
<i>Act of the Bengal Council.</i>	
VI of 1862 ...	The Bengal Rent Act, 1862.
IV of 1867 ...	The Bengal Rent (Appeals) Act, 1867.
VIII of 1879 ...	The Bengal Rent Settlement Act, 1879.



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EXTRAORDINARY.

FRIDAY, OCTOBER 30, 1908.

Government of Bengal.

FINANCIAL DEPARTMENT.

Miscellaneous.

NOTIFICATION.

No. 1434T.—Mis.

Darjeeling, the 29th October 1908.

IN reference to the Notification No. 3740Mis., dated the 29th November 1907, published at pages 2071-2072, Part I of the *Calcutta Gazette* of the 4th December 1907, in which among other holidays the 2nd November 1908 was declared to be a public holiday on account of Jagadhatri Puja, the Lieutenant-Governor hereby declares, under section 25 of the Negotiable Instruments Act XXVI of 1881, that date (the 2nd November 1908) to be the date for the celebration of the fiftieth anniversary of the assumption of the Government of India by the Crown.

C. E. A. W. OLDHAM,
Secretary to the Government of Bengal.



The Calcutta Gazette

EXTRAORDINARY.

MONDAY, NOVEMBER 30, 1908.

Government of Bengal.

APPOINTMENT DEPARTMENT.

NOTIFICATION.

The 30th November 1908.—The Hon'ble Sir Edward Norman Baker, K.C.S.I., of the Indian Civil Service, having been appointed by His Excellency the Governor-General of India, with the approbation of His Majesty the King Emperor of India, to be Lieutenant-Governor of the Bengal Division of the Presidency of Fort William, has this day (afternoon) assumed charge of the office under the usual salute.

F. W. DUKE,

Offg. Chief Secy. to the Govt. of Bengal.

NOTIFICATION.

The 30th November 1908.—The Hon'ble the Lieutenant-Governor of Bengal has been pleased to make the following appointments:—

Captain C. J. L. Allanson, 6th Gurkha Rifles, to be Private Secretary to the Lieutenant-Governor of Bengal.

Lieutenant R. C. B. Williams, 35th Sikhs, Lieutenant J. S. Dallas, 6th Gurkha Rifles, } to be *Aides-de-Camp* on the personal staff of the Lieutenant-Governor of Bengal.

F. W. DUKE,

Offg. Chief Secy. to the Govt. of Bengal.